

RULE MAKING ACTIVITIES

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

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

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

Department of Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Use of SCPA Section 1301 Affidavits for the Collection of Abandoned Funds with the Office of Unclaimed Funds

I.D. No. AAC-19-14-00011-P

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

Proposed Action: Addition of Part 130 to Title 2 NYCRR.

Statutory authority: Abandoned Property Law, section 1414

Subject: Use of SCPA section 1301 Affidavits for the collection of abandoned funds with the Office of Unclaimed Funds.

Purpose: To set forth the situations when a SCPA section 1310 affidavit will be accepted for the claim of abandoned funds.

Text of proposed rule: A new Part 130 to Title 2 NYCRR is proposed as follows:

Part 130

Claim for funds held by the Office of Unclaimed Funds owed to a decedent or a decedent's estate qualifying as a Small Estate

Section 130.1 Purpose.

Surrogate's Court Procedure Act section 1310 permits, but does not require, debtors to discharge debts to a decedent or a decedent's estate, by making payment to certain relatives or creditors of the decedent. The purpose of this regulation is to set forth the circumstances under which the Comptroller will exercise his or her discretion under such provision to discharge debts owed to decedents or their estates with respect to property held under the Abandoned Property Law by payment of claims submit-

ted by a decedent's relatives and creditors, and to set forth processes by which other claims not exceeding \$30,000 may be made.

Section 130.2 Acceptance of Affidavits under SCPA § 1310.

(a) A spouse, child, unreimbursed payor of funeral expenses, and the Department of Social Services or a social services district may submit claims through an affidavit pursuant to section 1310 of the Surrogate's Court Procedure Act up to the maximum amounts allowed by that section. A spouse or child must also submit a Table of Heirs on a form provided by the Office of Unclaimed Funds.

(b) Heirs or creditors, other than those set forth in subdivision (a), may only submit an affidavit pursuant to section 1310 of the Surrogate's Court Procedure Act when the total amount being claimed does not exceed \$1,000 in value. In the case of an heir, the claimant must also submit a Table of Heirs on a form provided by the Office of Unclaimed Funds.

(c) Heirs or creditors as set forth in subdivision (b), in order to claim to funds in excess of \$1,000 in value, must be appointed as an estate representative (including a voluntary administrator) of the decedent's estate by the appropriate Surrogate's Court, or in the case of a non-New York decedent, by the appropriate court of the state of domicile of the decedent. After having been appointed, the estate representative must provide to the Office of Unclaimed Funds a currently dated certificate of letters from the appropriate Surrogate's Court, or similar documents with respect to an estate representative appointed for a non-New York domiciliary.

Section 130.3 Other Requirements.

Any heir or creditor must also provide any and all documents required by the Office of Unclaimed Funds which are necessary to prove the decedent's identity and entitlement to the funds, or are otherwise necessary in order for the Office of Unclaimed Funds to meet all of its statutory obligations or approve the claim.

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua, Department of Audit and Control, 110 State Street, Albany, New York 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

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 amendment is authorized under sections 1401 and 1414 of the Abandoned Property Law.

2. Legislative Objectives: This rule will require that certain claimants of abandoned funds payable to a decedent or a decedent's estate, which qualifies as a small estate, must have a voluntary administrator appointed for the estate to make claim to the abandoned funds. In the past, the Office of Unclaimed Funds permitted an heir or creditor qualifying under Surrogate's Court Procedure Act (SCPA) Section 1310 to claim assets of a decedent or a decedent's estate up to the maximums provided in such statute (which range from \$5,000 to \$30,000) by providing proof of the decedent's ownership and completing an affidavit (containing the information prescribed by SCPA Section 1310) establishing the claimant's relationship to the decedent and the claimant's entitlement. While this rule will continue this practice with respect to claims by spouses and children of the decedent, payors of funeral expenses and the Departments of Social Services or social services districts, this rule will now require, in the case of claims by other heirs and creditors that a voluntary administrator be appointed for the estate when the qualified heirs and creditors are claiming abandoned funds valued over \$1,000.

3. Needs and Benefits: In discussions with the Surrogate's Court Advisory Committee, this Office was advised that the Committee was concerned that, because these affidavits are used without any Surrogate's Court supervision (as is anticipated by SCPA Section 1310), there is the potential for fraud and abuse in the use of these affidavits, particularly where the persons claiming have a more remote connection to the decedent. Since the acceptance of affidavits under section 1310 is voluntary on the part of debtors, in order to address these concerns, this Office

agreed to limit the acceptance of such affidavits to \$1,000, except in the cases of spouses, children, payors of funeral expenses and the Departments of Social Services and Social Services Districts. By requiring certain qualifying heirs and creditors to file for voluntary administration with the Surrogate's Court, the Court can exercise its jurisdiction over the small estates and ensure the proper administration of the estate.

4. Costs: a. Costs to the regulated parties: Claimants required to obtain voluntary administration will be required to pay a statutory one dollar filing fee to the Surrogate's Court to be appointed voluntary administrator.

b. Costs to the agency, state and local governments for the implementation and continuation of the rule: The revision of this rule should be cost neutral to the agency. The costs for state and local governments should also be cost neutral since, generally, state and local governments would utilize affidavits under section 1310 primarily with respect to claims by the Departments of Social Services or Social Services Districts – and such entities are not subjected to the lower thresholds for the use of such affidavits under this rule. c. Sources, methodology of cost analysis: The cost to petition for voluntary administration is set forth by statute in Article 13 of the SCPA.

5. Local Government Mandates: None.

6. Paperwork: Spouses and children of a decedent, payors of funeral expenses and the Department of Social Services and social services districts owed a debt by a decedent or a decedent's estate can continue to use SCPA Section 1310 Affidavits for claiming abandoned funds owed to a decedent or a decedent's estate up to the statutory maximums. Other qualified heirs and creditors of a decedent or a decedent's estate must complete the Surrogate's Court forms to petition to be appointed voluntary administrator of a small estate where the amount being claimed exceeds \$1,000. The forms can be completed on-line at the Office of Court Administration website. A link to such website is already contained on the Comptroller's website. If necessary, such forms can be obtained in paper form from the appropriate Surrogate's Court.

7. Duplication: The rule does not duplicate, overlap or conflict with any other legal requirements of the state or federal governments.

8. Alternatives: No significant alternatives were considered.

9. Federal Standards: The rule does not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance Schedule: It is believed that compliance can be achieved immediately upon the rule's adoption.

Regulatory Flexibility Analysis

1. Effect of Rule: This Office sees very few, if any, claims from small businesses claiming as a creditor of a decedent under SCPA Section 1310, with the exception of funeral homes seeking to recover burial costs. Since payors of funeral expenses are excluded from the lower thresholds established by this rule, the rule should not have any significant effect on small businesses claiming as creditors of a decedent. The only other small businesses affected by this rule will be abandoned property location services providers doing business with the Office of Unclaimed Funds on behalf of their clients who are heirs or creditors of a decedent's estate qualifying as a small estate (under \$30,000) pursuant to the SCPA. It is estimated that there are 282 property location service providers who qualify as small businesses who will be affected. Local governments should not be significantly affected since Departments of Social Services and Social Services Districts will be able to continue to claim decedent's abandoned funds utilizing a SCPA Section 1310 Affidavit up to the statutory threshold.

2. Compliance Requirements: The proposed rule will require certain claimants to abandoned funds owed to decedent's estates qualifying as small estates to have a voluntary administrator appointed for the estate rather than permit a qualifying affiant to complete a SCPA Section 1310 Affidavit.

3. Professional Services: No professional services are necessary to comply with this rule since the process culminating in the appointment of a voluntary administrator is very simple and can be performed by completing on-line forms on the Office of Court Administration website. The forms are advertised as "DIY" (do-it-yourself) and are easy to complete. A link to the Office of Court Administration website's DIY forms has already been added to the Comptroller's website to further help claimants in completing the appropriate paperwork.

4. Compliance Costs: There is a statutory one dollar filing fee payable to the appropriate Surrogate's Court which must accompany the petition to the Surrogate's Court to be appointed a voluntary administrator.

5. Economic and Technological Feasibility: There are no economic or technological issues involved in order to comply with this rule. The voluntary administrator forms are accessible on-line, but also are available in paper form from the appropriate surrogate's court office.

6. Minimizing Adverse Impact: The approaches suggested by the Legislature in SAPA § 202-b(1) were not considered. The on-line forms can be completed by anyone in any geographical area and will not cause undue burden or expense upon any claimant.

7. Small Business and Local Government Participation: In order to ensure small businesses and local governments have an opportunity to participate in the rule making process; a press release will be issued and posted on the Comptroller's website regarding this proposed rule.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: This rule will affect all geographical areas of the State including rural areas.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The proposed rule will require that certain claimants to abandoned funds owed to a decedent or a decedent's estate qualifying as a small estate must have a voluntary administrator appointed for the estate rather than permit a qualifying affiant to complete a SCPA section 1310 Affidavit. No professional services are necessary to comply with this rule since the process culminating in the appointment of a voluntary administrator is very simple and can be performed by completing on-line forms on the Office of Court Administration website. The forms are advertised as "DIY" (do-it-yourself) and are easy to complete.

3. Costs: There is a statutory one dollar filing fee, payable to the appropriate Surrogate's Court, which must accompany the petition to be appointed a voluntary administrator.

4. Minimizing Adverse Impact: The approaches suggested by SAPA § 202-bb(2) were not considered. The on-line forms can be completed by anyone in any geographical area and will not cause undue burden or expense upon any claimant.

5. Rural Area Participation: In order ensure regulated parties in rural areas have an opportunity to participate in the rule making process a press release will be issued and posted on the Comptroller's website regarding this proposed rule.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Student Promotion/Placement and Permanent Records and Transcripts, and Grades 3-8 State ELA and Mathematics Assessments

I.D. No. EDU-19-14-00005-EP

Filing No. 338

Filing Date: 2014-04-29

Effective Date: 2014-04-29

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

Proposed Action: Amendment of sections 100.2, 100.3 and 100.4; and addition of section 104.3 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 210 (not subdivided), 215 (not subdivided), 305(1), (2), (20), (45), (46) and (47), 308 (not subdivided), 309 (not subdivided) and 3204(3); and L. 2014, ch. 56, part AA, subparts B and C

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to conform the Commissioner's Regulations to Subparts B and C of Part AA of Chapter 56 of the Laws of 2014, which became effective April 1, 2014.

Part AA, Subpart B of Chapter 56 of the Laws of 2014 adds new subdivisions (45) and (46) to Education Law section 305, which direct the Commissioner to provide that no school district or board of cooperative educational services may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, and that any test results on such assessments sent to parents/persons in parental relation include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided for diagnostic purposes. The statute provides that these provisions shall expire and be deemed repealed on December 31, 2018.

Part AA, Subpart C of Chapter 56 of the Laws of 2014 adds a new subdivision (47) to Education Law section 305, which directs the Commissioner to provide that no school district shall make any student promo-

tion or placement decisions based solely or primarily on student performance on the state administered standardized English language arts and mathematics assessments for grades three through eight. However, a school district may consider student performance on such state assessments provided that the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations. In addition, the Commissioner shall require every school district to annually notify the parents and persons in parental relation to the students attending such district of the district's grade promotion and placement policy along with an explanation of how such policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation.

Because the Board of Regents meets at scheduled intervals, the July 10-11, 2014 meeting is the earliest the proposed rule could be presented for adoption, after publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 14, 2014 and expiration of the 45-day public comment period required under the State Administrative Procedure Act. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the July meeting, would be July 30, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency adoption of these regulations is necessary now for the preservation of the general welfare to immediately conform the Commissioner's Regulations to timely implement Subparts B and C of Part AA of Chapter 56 of the Laws of 2014, relating to grades 3-8 ELA and mathematics assessments and promotion and placement determinations, and student official transcripts and permanent records, and thus ensure the timely implementation of the statute.

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its July 10-11, 2014 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Student promotion/placement and permanent records and transcripts, and grades 3-8 State ELA and Mathematics assessments.

Purpose: Conform Commissioner's Regulations to Education Law section 305(45), (46) and (47), as added by subparts B and C of part AA of L. 2014, ch. 56.

Text of emergency/proposed rule: 1. Subdivision (ll) of section 100.2 of the Regulations of the Commissioner is added, effective April 29, 2014, as follows:

(ll) *Grade promotion and placement policy. Each school district shall adopt a grade promotion and placement policy that is consistent with sections 100.3(b)(2)(iv), 100.4(b)(2)(v) and 100.4(e)(6) of this Part, and annually notify the parents and persons in parental relation to the students attending such district of such policy along with an explanation of how the policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation.*

2. Paragraph (2) of subdivision (b) of section 100.3 of the Regulations of the Commissioner is amended, effective April 29, 2014, as follows:

(2) Required assessments.

(i) Except as otherwise provided in subparagraphs (ii) and (iii) of this paragraph, at the specified grade level, all students shall take the following tests, provided that testing accommodations may be used as provided for in section 100.2(g) of this Part in accordance with department policy:

(a) beginning in January 1999, the English language arts elementary assessment and the mathematics elementary assessment shall be administered in grade four and, beginning in the 2005-2006 school year, the English language arts elementary assessments and the mathematics elementary assessment shall be administered in grades three and four; and

(b) beginning in January 2000, the elementary science assessment shall be administered in grade four.

(ii) Students receiving home instruction pursuant to section 100.10 of this Part may take, but shall not be required to take, the State assessments required of public school students.

(iii) In accordance with their individualized education programs, students with disabilities instructed in the alternate academic achievement standards defined in section 100.1(t)(2)(iv) of this Part shall be administered a State alternate assessment to measure their achievement.

(iv) *Notwithstanding the provisions of this section, no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the English language arts elementary assessments and the mathematics elementary assessments administered in grades three and four. However, a school district may consider student performance on such assessments provided the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.*

3. Paragraph (2) of subdivision (b) of section 100.4 of the Regulations of the Commissioner is amended, effective April 29, 2014, as follows:

(2) Required assessments.

(i) Except as otherwise provided in subparagraphs (iv) and (v) of this paragraph, all students shall take the following assessments, provided that testing accommodations may be used as provided for in section 100.2(g) of this Part in accordance with department policy:

(ii) beginning with the 2005-06 school year, English language arts and mathematics assessments shall be administered in grades five and six;

(iii) for school years prior to July 1st of the 2010-2011 school year, all students in grade five shall take the social studies elementary assessment;

(iv) students receiving a program of home instruction pursuant to section 100.10 of this Part may take, but shall not be required to take, the State assessments required of public school students;

(v) in accordance with their individualized education programs, students with disabilities instructed in the alternate academic achievement standards defined in section 100.1(t)(2)(iv) of this Part shall be administered a State alternate assessment to measure their achievement;

(vi) beginning September 1, 2000 and continuing up to and including the 2004-2005 school year, fifth grade students who scored at Level 1 of the State designated performance levels on the English language arts elementary assessment and/or the mathematics elementary assessment administered in grade four shall receive at least one semester of academic intervention services and be retested no later than the completion of grade five. Multiple sources of evaluation, including, but not limited to, a commercial test or other external test of demonstrated technical quality determined by the school district to be a valid and reliable means of evaluating a student's progress in achieving the elementary level State learning standards in English language arts and mathematics, shall be used to retest students in accordance with the district-adopted or district-approved procedure established pursuant to section 100.2(ee) of this Part;

(vii) *Notwithstanding the provisions of this section, no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the English language arts assessments and the mathematics assessments administered in grades five and six. However, a school district may consider student performance on such assessments provided the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.*

4. Subdivision (e) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective April 29, 2014, as follows:

(e) Required assessments in grades seven and eight. Except as otherwise provided in subdivisions (f) and (g) of this section, and except for students who have been admitted to a higher grade without completing the grade at which the assessment is administered, all students shall take the following assessments, provided that testing accommodations may be used as provided for in section 100.2(g) of this Part in accordance with department policy.

(1) Beginning with school year 1998-99, the English language arts intermediate assessment shall be administered in grade eight. Beginning with the 2005-2006 school year, English language arts assessments shall be administered in grades seven and eight.

(2) Beginning with the 1998-99 school year, the mathematics intermediate assessment shall be administered in grade eight. Beginning with the 2005-2006 school year, mathematics assessments shall be administered in grades seven and eight, provided that, for the 2013-2014 school year, students who attend grade seven or eight may take a Regents examination in mathematics in lieu of or in addition to the grade seven or eight mathematics assessment, in accordance with section 100.18(b)(14) of this Part.

(3) The program evaluation test in social studies in grade eight, beginning in May 1989. Beginning with the school year 2000-2001 through the 2009-2010 school year, the social studies intermediate assessment shall replace the program evaluation test and shall be administered in grade eight.

(4) Beginning with the school year 2000-2001, the science intermediate assessment shall be administered in grade eight; provided that students who attend grade eight may take a Regents examination in science in lieu of or in addition to the grade eight science intermediate assessment, in accordance with this section and section 100.18(b)(14) of this Part, and provided further that the science intermediate assessment shall not be administered in grade eight to students who take such assessment in grade seven and are being considered for placement in an accelerated high school-level science course when they are in grade eight pursuant to subdivision (d) of this section.

(5) Such other assessments as the commissioner determines appropriate.

(6) *Notwithstanding the provisions of this section, no school district shall make any student promotion or placement decisions based solely or*

primarily on student performance on the English language arts assessments and the mathematics assessments administered in grades seven and eight. However, a school district may consider student performance on such assessments provided the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.

5. Section 104.3 of the Regulations of the Commissioner of Education is added, effective April 29, 2014, as follows:

§ 104.3 Prohibition on inclusion of individual student scores on State administered standardized English language arts or mathematics assessments for grades three through eight. During the period commencing on April 1, 2014 and expiring on December 31, 2018:

(a) no school district or board of cooperative educational services may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, provided that nothing herein shall be construed to interfere with required State or federal reporting or to excuse a school district from maintaining or transferring records of such test scores separately from a student's permanent record, including for purposes of required State or federal reporting; and

(b) any test results on a State administered standardized English language arts or mathematics assessment for grades three through eight sent to parents or persons in parental relation to a student shall include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided to the student and parents for diagnostic purposes.

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 July 27, 2014.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Ken Slentz, Deputy Commissioner, State Education Department, Office of P-12 Education, State Education Building 2M, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

1. STATUTORY AUTHORITY:

Education Law section 101 continues existence of Education Department, with Board of Regents as its head, and authorizes Regents to appoint Commissioner of Education as Department's Chief Administrative Officer, which is charged with general management and supervision of all public schools and educational work of State.

Education Law section 207 empowers Regents and Commissioner to adopt rules and regulations to carry out State education laws and functions and duties conferred on the Department.

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 210 authorizes Regents to register domestic and foreign institutions in terms of State standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and professions in the State.

Education Law section 215 authorizes Commissioner to require schools and school districts to submit reports containing such information as Commissioner shall prescribe.

Education Law section 305(1) and (2) provide Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents. Section 305(20) provides Commissioner shall have such further powers and duties as charged by the Regents.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges Commissioner with general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3204(3) provides for required courses of study in the public schools and authorizes SED to alter the subjects of required instruction.

Part AA, Subpart B of Chapter 56 of the Laws of 2014 added new subdivisions (45) and (46) to Education Law section 305, which direct the Commissioner to provide that no school district or board of cooperative educational services may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, and that any test results on such assessments sent to parents/persons in parental relation include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided for diagnostic purposes. The statute provides that these provisions shall expire and be deemed repealed on December 31, 2018.

Part AA, Subpart C of Chapter 56 of the Laws of 2014 added a new subdivision (47) to Education Law section 305, which directs the Commissioner to provide that no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the state administered standardized English language arts and mathematics assessments for grades three through eight. However, a school district may consider student performance on such state assessments provided that the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations. In addition, the Commissioner shall require every school district to annually notify the parents and persons in parental relation to the students attending such district of the district's grade promotion and placement policy along with an explanation of how such policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014.

4. COSTS:

Cost to the State: none.

Costs to local government: none.

Cost to private regulated parties: none.

Cost to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional costs on the State, regulated parties, or the State Education Department, beyond those inherent in the statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional program, service, duty or responsibility upon local governments beyond those inherent in the statute.

Consistent with the statute, the proposed amendment provides that no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the state administered standardized English language arts and mathematics assessments for grades three through eight. However, a school district may consider student performance on such state assessments provided that the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.

6. PAPERWORK:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any specific recordkeeping, reporting or other paperwork requirements beyond those inherent in the statute.

Consistent with the statute, the proposed amendment requires each school district to adopt a grade promotion and placement policy that is consistent with sections 100.3(b)(2)(iv), 100.4(b)(2)(v) and 100.4(e)(6) of this Commissioner's Regulations, and annually notify the parents and persons in parental relation to the students attending such district of such policy along with an explanation of how the policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation. The proposed amendment also provides, for the period commencing on April 1, 2014 and expiring on December 31, 2018, that no school district or board of cooperative educational ser-

vices may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, and that any test results on such assessments sent to parents/persons in parental relation include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided to the student and parents/persons in parental relation for diagnostic purposes.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal requirements. The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014. There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated parties will be able to achieve compliance with the rule by its effective date. The proposed amendment merely conforms the Commissioner's Regulations to Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014, which became effective on March 31, 2014.

Regulatory Flexibility Analysis

Small businesses:

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014. The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local governments:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 public school districts in the State, and to charter schools that are authorized to issue Regents diplomas with respect to State assessments and high school graduation and diploma requirements. At present, there are 34 charter schools authorized to issue Regents diplomas.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements upon school districts or charter schools beyond those inherent in the statute.

Consistent with the statute, the proposed amendment provides that no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the state administered standardized English language arts and mathematics assessments for grades three through eight. However, a school district may consider student performance on such state assessments provided that the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.

Consistent with the statute, the proposed amendment further requires each school district to adopt a grade promotion and placement policy that is consistent with sections 100.3(b)(2)(iv), 100.4(b)(2)(v) and 100.4(e)(6) of this Commissioner's Regulations, and annually notify the parents and persons in parental relation to the students attending such district of such policy along with an explanation of how the policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation. The proposed amendment imposes no additional professional service requirements.

Consistent with the statute, the proposed amendment also provides, for the period commencing on April 1, 2014 and expiring on December 31, 2018, that no school district or board of cooperative educational services may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, and that any test results on such assessments sent to parents/persons in parental relation include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided to the student and parents/persons in parental relation for diagnostic purposes.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on school districts or charter schools.

4. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional costs on school districts or charter schools beyond those inherent in the statute.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule imposes no technological requirements on school districts or charter schools. Costs are discussed under the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements or costs on school districts or charter schools beyond those inherent in the statute.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed rule have been provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts and to charter schools.

8. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 695 public school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed amendment also applies to charter schools in such areas, to the extent they offer instruction in the high school grades and issue Regents diplomas. At present, there is one charter school located in a rural area that is authorized to issue Regents diplomas.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements upon school districts or charter schools in rural areas beyond those inherent in the statute.

Consistent with the statute, the proposed amendment provides that no school district shall make any student promotion or placement decisions based solely or primarily on student performance on the state administered standardized English language arts and mathematics assessments for grades three through eight. However, a school district may consider student performance on such state assessments provided that the school district uses multiple measures in addition to such assessments and that such assessments do not constitute the major factor in such determinations.

Consistent with the statute, the proposed amendment requires each school district to adopt a grade promotion and placement policy that is consistent with sections 100.3(b)(2)(iv), 100.4(b)(2)(v) and 100.4(e)(6) of this Commissioner's Regulations, and annually notify the parents and persons in parental relation to the students attending such district of such policy along with an explanation of how the policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation.

Consistent with the statute, the proposed amendment also provides, for the period commencing on April 1, 2014 and expiring on December 31, 2018, that no school district or board of cooperative educational services may place or include on a student's official transcript or maintain in a student's permanent record any individual student score on a State administered standardized English language arts or mathematics assessment for grades three through eight, and that any test results on such as-

assessments sent to parents/persons in parental relation include a clear and conspicuous notice that such results will not be included on the student's official transcript or in the student's permanent record and are being provided to the student and parents/persons in parental relation for diagnostic purposes.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014 and does not impose any additional costs on school districts or charter schools beyond those inherent in the statute.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is merely conforms the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements or costs on school districts or charter schools beyond those inherent in the statute. Because the statutory requirement upon which the proposed amendment is based applies to all school districts in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16, of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law 305(45), (46) and (47), as added by Part AA, Subparts B and C of Chapter 56 of the Laws of 2014. The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Appeals to Commissioner of Education Relating to New York City Charter School Co-Location Sites

I.D. No. EDU-19-14-00006-EP

Filing No. 339

Filing Date: 2014-04-29

Effective Date: 2014-04-29

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

Proposed Action: Amendment of section 276.11 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), 310(1), (4), (6) and (7), 311(1-4) and 2853(3)(e), as added by L. 2014, ch. 56, part BB, section 5

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

Specific reasons underlying the finding of necessity: On March 31, 2014, Governor Cuomo signed Chapter 56 of the Laws of 2014. Section 5 of

Part BB of Chapter 56, which became effective April 1, 2014, added a new paragraph (e) to Education Law § 2853(3) to provide, among other things, for an expedited Education Law § 310 appeal to the Commissioner from the New York City School District's offer or refusal to offer a co-location site upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and

- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

The proposed amendment enacts technical amendments to § 276.11 of the Commissioner's Regulations to provide for expedited appeals in the above instances pursuant to Education Law § § 310 and 2853(3)(e).

Because the Board of Regents meets at scheduled intervals, the July 10-11, 2014 meeting is the earliest the proposed amendment could be presented for adoption, after publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 14, 2014 and expiration of the 45-day public comment period required under the State Administrative Procedure Act. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the July meeting, would be July 30, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency adoption of these regulations is necessary now for the preservation of the general welfare to in order to ensure that procedures are in place as soon as possible for expedited appeals relating to New York City charter school co-locations brought pursuant to Education Law § § 310 and 2853(3)(e) as added by § 5 of Part BB of Chapter 56 of the Laws of 2014, so that the parties and their attorneys are on notice of the procedures they must follow, and decisions in such appeals are handled expeditiously pursuant to statutory requirements.

It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at its July 10-11, 2014 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Appeals to Commissioner of Education relating to New York City charter school co-location sites.

Purpose: To implement Education Law 853(3)(e), as added by of Part BB of Chapter 56 of the Laws of 2014.

Text of emergency/proposed rule: Paragraph (1) of subdivision (b) of section 276.11 of the Regulations of the Commissioner of Education is amended, effective April 29, 2011, as follows:

(1) The procedures set forth in this section shall apply to:

(i) appeals pursuant to Education Law section 2853(3)(a-5) from:
[(i)] (a) final determinations of the board of education to locate or co-locate a charter school within a public school building;

[(ii)] (b) the implementation of, and compliance with, the building usage plan developed pursuant to Education Law section 2853(3)(a-3); and/or

[(iii)] (c) revisions of such a building usage plan, relating to a proposal for the collaborative usage of shared resources and spaces between the charter school and the non-charter schools, on the grounds that such revision fails to meet the equitable access standard set forth in Education Law section 2853(3)(a-3)(2)(B); or

(ii) appeals pursuant to Education Law section 2853(3)(e) from the city school district's offer or failure to offer a co-location site upon a written request for co-location made by:

(a) charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; or

(b) charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

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 July 27, 2014.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.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

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education

Department, with the Board of Regents as its head, and authorizes the Regents to appoint the Commissioner as chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 authorizes the Regents and Commissioner to adopt rules and regulations implementing State law regarding education.

Education Law section 305(1) designates the Commissioner as chief executive officer of the State system of education and the Regents, and authorizes the Commissioner to enforce laws relating to the educational system and to execute the Regents' educational policies. Section 305(2) authorizes the Commissioner to have general supervision over schools subject to the Education Law.

Education Law section 310 provides that an aggrieved party may appeal by petition to the Commissioner of Education in consequence of certain specified actions by school districts and school officials.

Education Law section 311 authorizes the Commissioner to regulate the practice of appeals to the Commissioner brought pursuant to Education Law section 310.

§ 5 of Part BB of Chapter 56 of the Laws of 2014, which became effective on March 31, 2014, added a new paragraph (e) to Education Law section 2853(3) to provide, among other things, for an expedited Education Law § 310 appeal to the Commissioner for appeals from the New York City School District's offer or refusal to offer a co-location site upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and
- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes to regulate the practice and procedures to be followed in Education Law section appeals, and is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014 by establishing procedures for expedited appeals relating to New York City charter school co-locations brought pursuant to Education Law § § 310 and 2853(3)(e).

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014 by establishing procedures for an expedited Education Law § 310 appeal to the Commissioner for appeals from the New York City School District's offer or refusal to offer a co-location site upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and
- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

The proposed amendment enacts technical amendments to § 276.11 of the Commissioner's Regulations to provide for expedited appeals in the above instances pursuant to Education Law § § 310 and 2853(3)(e).

4. COSTS:

Cost to the State: None.

Costs to local government: None.

Cost to private regulated parties: None.

Cost to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014 and will not impose any costs on the State or regulated parties beyond those imposed by the statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014 and will not impose any additional program, service, duty or responsibility beyond those imposed by the statute.

6. PAPERWORK:

The proposed amendment imposes no additional reporting, forms or other paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with State and Federal rules or requirements, and is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014.

8. ALTERNATIVES:

There were no significant alternatives. The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014.

9. FEDERAL STANDARDS:

The proposed amendment is necessary to implement § 5 of Part BB of

Chapter 56 of the Laws of 2014. There are no applicable standards of the Federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the provisions of the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to appeals to the Commissioner of Education pursuant to Education Law § § 310 and 2853(3)(e) relating to New York City charter school co-location. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendment applies to the City School District of the City of New York.

COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014, which became effective on March 31, 2014, and does not impose any additional compliance requirements beyond those imposed by the statute. The proposed amendment establishes procedures for an expedited Education Law § 310 appeal to the Commissioner from the New York City School District's offer or refusal to offer a co-location site upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and
- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

The proposed amendment enacts technical amendments to § 276.11 of the Commissioner's Regulations to provide for expedited appeals in the above instances pursuant to Education Law § § 310 and 2853(3)(e).

PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements.

COMPLIANCE COSTS:

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014 and will not impose any costs on the State or local governments beyond those imposed by the statute.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new economic costs or technological requirements on local governments.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014 and will not impose any compliance requirements or costs on the State or local governments beyond those imposed by the statute. The proposed amendment is establishes procedures for an expedited Education Law § 310 appeal to the Commissioner from the New York City School District's offer or refusal to offer a co-location site upon written request for co-location made by:

- charter schools that are approved by their charter entity pursuant to Article 56 of the Education Law to first commence instruction for the 2014-2015 school year or thereafter; and
- charter schools that require additional space due to an expansion of grade level for the 2014-2015 school year or thereafter, and which are approved by their charter entity pursuant to Article 56 of the Education Law for those grades newly provided.

The proposed amendment enacts technical amendments to § 276.11 of the Commissioner's Regulations to provide for expedited appeals in the above instances pursuant to Education Law § § 310 and 2853(3)(e).

LOCAL GOVERNMENT PARTICIPATION:

A copy of the proposed amendment was provided to the New York City Department of Education for review and comment.

INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement statutory requirements in Education Law section 2853(3)(e), as added by § 5 of Part BB of Chapter 56 of the Laws of 2014, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the

proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

The proposed amendment relates to expedited appeals to the Commissioner of Education pursuant to Education Law § § 310 and 2853(3)(e) regarding New York City charter school co-locations. The proposed amendment is applicable to the City School District of the City of New York and will not have an adverse impact on rural areas or impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Because it is evident from the nature of the proposed amendment that it does not affect rural areas or public or private entities in rural areas, no further measures were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment is necessary to implement § 5 of Part BB of Chapter 56 of the Laws of 2014, and relates to expedited appeals to the Commissioner of Education pursuant to Education Law § § 310 and 2853(3)(e) regarding New York City charter school co-locations. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Traditional Standardized Tests Administration

I.D. No. EDU-19-14-00007-EP

Filing No. 340

Filing Date: 2014-04-29

Effective Date: 2014-04-29

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

Proposed Action: Amendment of sections 100.3, 151-1.2 and 151-1.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 210 (not subdivided), 215 (not subdivided), 305(1), (2), (20), (44), 308 (not subdivided), 309 (not subdivided), 3204(3), 3602-e(12) and (15); L. 2014, ch. 56, part AA, subpart A

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to conform the Commissioner's Regulations to Subpart A of Part AA of Chapter 56 of the Laws of 2014, which became effective April 1, 2014.

Part AA, Subpart A of Chapter 56 of the Laws of 2014, which became effective on April 1, 2014, adds a new subdivision (44) to Education Law section 305, and amends Education Law section 3602-e(15), to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs (including Universal Prekindergarten programs), and grades kindergarten through second grade. Consistent with the statute, the proposed amendment prohibits the administration of traditional standardized tests in prekindergarten programs (including Universal Prekindergarten programs), and grades kindergarten through two.

Because the Board of Regents meets at scheduled intervals, the July 10-11, 2014 meeting is the earliest the proposed amendment could be presented for adoption, after publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on May 14, 2014 and expiration of the 45-day public comment period required under the State Administrative Procedure Act. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the July meeting, would be July 30, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency adoption of the proposed amendment is necessary now for the preservation of the general welfare to immediately conform the Commissioner's Regulations to timely implement Subpart A of Part AA of Chapter 56 of the Laws of

2014, relating to prohibiting the administration of traditional standardized tests in prekindergarten programs (including Universal Pre-Kindergarten programs and grades kindergarten through two, and thus ensure the timely implementation of the statute.

It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at its July 10-11, 2014 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Traditional standardized tests administration.

Purpose: To prohibit administration of traditional standardized tests in prekindergarten programs and in grades kindergarten through two.

Text of emergency/proposed rule: 1. Subdivision (a) of section 100.3 of the Regulations of the Commissioner of Education is amended, effective April 29, 2014, as follows:

(a) Prekindergarten and kindergarten programs operated by public schools and voluntarily registered nonpublic schools.

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) *Prohibition on administration of traditional standardized tests.*

(i) *For purposes of this subdivision, "traditional standardized test" shall mean a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized tests are those that require the student (and not the examiner/assessor) to directly use a "bubble" answer sheet. Traditional standardized tests do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by federal law; and/or assessments used for diagnostic or formative purposes, including but not limited to assessments used for diagnostic screening required by Education Law § 3208(5).*

(ii) *Notwithstanding the provisions of this subdivision, no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in pre-kindergarten and kindergarten programs; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.*

2. Paragraph (2) of subdivision (b) of section 100.3 of the Regulations of the Commissioner of Education is amended, effective April 29, 2014, as follows:

(2) Required assessments.

(i) Except as otherwise provided in subparagraphs (ii), [and] (iii) and (v) of this paragraph, at the specified grade level, all students shall take the following tests, provided that testing accommodations may be used as provided for in section 100.2(g) of this Part in accordance with department policy:

(a) . . .

(b) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) *Prohibition on administration of traditional standardized tests.*

(a) *For purposes of this subdivision, "traditional standardized test" shall mean a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized tests are those that require the student (and not the examiner/assessor) to directly use a "bubble" answer sheet. Traditional standardized tests do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by federal law; and/or assessments used for diagnostic or formative purposes, including but not limited to assessments used for diagnostic screening required by Education Law § 3208(5).*

(b) *Notwithstanding the provisions of this subdivision, no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in grades one and two; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.*

3. Section 151-1.2 of the Regulations of the Commissioner of Education is amended, effective April 29, 2014, as follows:

§ 151-1.2 Definitions.

As used in this Subpart:

- (a) . . .
- (b) . . .
- (c) . . .
- (d) . . .

(e) *“Traditional standardized test” shall mean a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized tests are those that require the student (and not the examiner/assessor) to directly use a “bubble” answer sheet. Traditional standardized tests do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by federal law; and/or assessments used for diagnostic or formative purposes, including but not limited to assessments used for diagnostic screening required by Education Law § 3208(5).*

3. Subdivision (b) of section 151-1.3 of the Regulations of the Commissioner of Education is amended, effective April 29, 2014, as follows:

(b) Assessments, monitoring and reporting.

- (1) . . .
- (2) . . .
- (3) . . .

(4) *Prohibition on administration of traditional standardized tests. Notwithstanding the provisions of this subdivision, no school district shall administer traditional standardized tests in a pre-kindergarten program; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.*

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 July 27, 2014.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Ken Slentz, Deputy Commissioner, State Education Department, Office of P-12 Education, State Education Building 2M, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head, and authorizes the Regents to appoint the Commissioner of Education as the chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 authorizes the Regents and the Commissioner to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the Department by law.

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and authorizes the Commissioner to enforce laws relating to the educational system and to execute the Regents’ educational policies. Section 305(20) provides Commissioner shall have such further powers and duties as charged by the Regents.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of education.

Education Law section 3204(3) provides for required courses of study in the public schools and authorizes SED to alter the subjects of required instruction.

Education Law section 3602-e(12) authorizes the Regents and the Commissioner to adopt regulations to implement the provisions of that section, relating to universal prekindergarten programs.

Section 1 of Subpart A of Part AA of Chapter 56 of the Laws of 2014 amended Education Law section 3602-e(15) to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in universal prekindergarten programs.

Section 2 of Subpart A of Part AA of Chapter 56 of the Laws of 2014 added a new Education Law section 305(44) to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs and in grades kindergarten through second grade.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to conform the Commissioner’s Regulations to Chapter 56 of the Laws of 2014.

3. NEEDS AND BENEFITS:

On March 31, 2014, Governor Cuomo signed Chapter 56 of the Laws of 2014. Chapter 56 enacts into law major components of legislation necessary to implement the education, labor, housing, and family assistance budget for the 2014-2015 state fiscal year.

Part AA, Subpart A of Chapter 56 of the Laws of 2014 adds a new subdivision (44) to Education Law section 305, and amends Education Law section 3602-e(15), to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs (including universal prekindergarten programs) and in grades kindergarten through two. Consistent with the statute, the proposed amendment provides that no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in pre-kindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.

4. COSTS:

Cost to the State: none.

Costs to local government: none.

Cost to private regulated parties: none.

Cost to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment is necessary to conform the Commissioner’s Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional costs on the State, regulated parties, or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner’s Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional program, service, duty or responsibility upon local governments. Consistent with the statute, the proposed amendment provides that no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in pre-kindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.

6. PAPERWORK:

The proposed amendment does not impose any specific recordkeeping, reporting or other paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal requirements. The proposed amendment is necessary to conform the Commissioner’s Regulations to Chapter 56 of the Laws of 2014.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Commissioner’s Regulations to Chapter 56 of the Laws of 2014. There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the rule by its effective date. The proposed amendment merely conforms the Commissioner’s Regulations to Subpart A of Part AA of Chapter 56 of the Laws of 2014, which became effective on March 31, 2014.

Regulatory Flexibility Analysis

Small businesses:

The proposed amendment is necessary to conform the Commissioner’s

Regulations to Chapter 56 of the Laws of 2014, relating to a prohibition on the administration of traditional standardized tests in prekindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two. The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local governments:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 public school districts in the State, and to charter schools that are authorized to issue Regents diplomas with respect to State assessments and high school graduation and diploma requirements. At present, there are 34 charter schools authorized to issue Regents diplomas.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements on local governments. Subpart A of Part AA of Chapter 56 of the Laws of 2014 adds a new Education Law section 305(44), and amends Education Law section 3602-e(15), to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in pre-kindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two. Consistent with the statute, the proposed amendment provides that no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in pre-kindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on local governments.

4. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional costs on school districts or charter schools.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule imposes no costs or technological requirements on school districts or charter schools.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment merely conforms the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements or costs on school districts or charter schools. Consistent with the statute, the proposed amendment provides that no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in pre-kindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed rule have been provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts and to charter schools.

8. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Education Law section 3602-e(15) as amended by section 1 of Subpart A of Part AA of Chapter 56 of the Laws of 2014, and Education Law 305(44) as added by section 2 of Subpart A of Part AA of Chapter 56 of the Laws of 2014, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 695 public school

districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed amendment also applies to charter schools in such areas, to the extent they offer instruction in the high school grades and issue Regents diplomas. At present, there is one charter school located in a rural area that is authorized to issue Regents diplomas.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements on school districts or charter schools in rural areas. Subpart A of Part AA of Chapter 56 of the Laws of 2014 adds a new Education Law section 305(44) and amends Education Law section 3602-e(15) to direct the Commissioner to prohibit the administration of traditional standardized tests, as defined in regulations issued by the Commissioner, in prekindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two. Consistent with the statute, the proposed amendment provides that no school district or voluntarily registered nonpublic school shall administer traditional standardized tests in pre-kindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two; provided that nothing herein shall prohibit assessments in which students perform real-world tasks that demonstrate application of knowledge and skills or assessments that are otherwise required to be administered by federal law.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional costs on school districts or charter schools in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is merely conforms the Commissioner's Regulations to Chapter 56 of the Laws of 2014, and does not impose any additional compliance requirements or costs on school districts or charter schools in rural areas. Because the statutory requirement upon which the proposed amendment is based applies to all school districts in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Education Law section 3602-e(15), as amended by section 1 of Subpart A of Part AA of Chapter 56 of the Laws of 2014, and Education Law 305(44), as added by section 2 of Subpart A of Part AA of Chapter 56 of the Laws of 2014, and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 56 of the Laws of 2014, relating to a prohibition on the administration of traditional standardized tests in prekindergarten programs (including universal prekindergarten programs) and in grades kindergarten through grade two. The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

Elementary and Secondary Education Act (ESEA) Flexibility and School and School District Accountability

I.D. No. EDU-19-14-00008-EP

Filing No. 341

Filing Date: 2014-04-29

Effective Date: 2014-04-29

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

Proposed Action: Amendment of section 100.18(i) and (j) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 210 (not subdivided), 215 (not subdivided), 305(1), (2) and (20), 308 (not subdivided), 309 (not subdivided), 3204(3), 3713(1) and (2)

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

Specific reasons underlying the finding of necessity: At its February 2014 meeting, the Board of Regents directed the State Education Department (SED) to submit a an ESEA Flexibility Waiver Renewal Request to the United States Department of Education (USDE) to amend the provisions of the approved ESEA Flexibility Waiver Request related to making adequate yearly progress (AYP); removal criteria for Priority Schools, Focus Districts and Focus Schools; and the methodology used to determine elementary-middle level English language arts and mathematics annual measurable objectives (AMOs).

On April 22, 2014, the USDE approved SED’s request to reset the AMOs. USDE review of the remainder of the State’s Waiver Renewal application is still pending. In addition, the USDE informed SED that the proposed amendment of section 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools, would not be considered to be an amendment to SED’s approved ESEA Flexibility Waiver such that USDE approval would be required.

Consistent with the approved Waiver Renewal Request, the proposed amendment amends paragraph 100.18(j) of the Commissioner’s Regulations to revise elementary and middle level AMOs to reflect the results from 2012-13 school year assessments that were based on Common Core Learning Standards aligned to college- and career-readiness.

Consistent with discussions between USDE and SED staff, the proposed amendment would also amend paragraph 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools.

Because the Board of Regents meets at scheduled intervals, the July 10-11, 2014 meeting is the earliest the proposed rule could be presented for adoption, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the July meeting, would be July 30, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency adoption of these regulations is necessary now for the preservation of the general welfare to immediately conform the Commissioner’s Regulations to: (1) timely implement New York State’s approved ESEA Flexibility Waiver with respect to the methodology for setting the AMOs for elementary-middle level ELA and mathematics, and (2) allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools, so that school districts may timely meet school/school district accountability requirements for the 2013-2014 school year and beyond.

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at its July 10-11, 2014 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Elementary and Secondary Education Act (ESEA) Flexibility and school and school district accountability.

Purpose: To conform the Commissioner’s Regulations to New York State’s ESEA Flexibility Waiver Renewal application.

Text of emergency/proposed rule:

1. Paragraph (2) of subdivision (i) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective April 29, 2014, as follows:

(2) Removal of focus district and focus school designation.

- (i) . . .
- (ii) . . .
- (iii) . . .

(iv) If the school district does not meet the criteria for removal by one or more of its focus schools meet the criteria for removal, the school district must, for each focus school it petitions for removal of focus designation, identify school(s) not currently identified as priority or focus to replace the school(s) meeting the criteria for removal, except that a school district is not required to:

(a) designate additional new focus schools to replace focus schools meeting the criteria for removal if by so doing the number of focus schools in the district would exceed the number of focus schools that the Commissioner requires a school district to identify pursuant to paragraph (5) of subdivision (g) of this section; or

(b) designate a school as a focus school that meets the criteria for focus school removal pursuant to subdivision (i) of this section in order to replace a focus school meeting the criteria for removal.

(v) Notwithstanding the provisions of subparagraph (iv) of this paragraph, a school district must identify at least one school as focus school if the school district does not meet the criteria for removal but all of its priority and focus schools meet the criteria for removal.

[[iv]] (vi) Removal of focus charter school designation.

- (a) . . .
- (b) . . .

2. Subdivision (j) of section 100.18 of the Regulations of the Commissioner is amended, effective April 29, 2014, as follows:

(j) Public school, school district and charter school performance criteria. Each school district and school accountability group shall be subject to the performance criteria specified below:

(1) Elementary/middle-level English language arts and mathematics, and high school English language arts and mathematics requirements. An annual measurable objective is a performance index set by the commissioner for 2010-11 school year results for each accountability group and that increases annually in equal increments so as to reduce by half the gap between the performance index for each accountability group in the 2010-11 school year and reach a goal of a performance index of 200 by the 2016-17 school year; *except that, beginning with the 2012-13 school year and thereafter, for each accountability group in elementary/middle-level English language arts and mathematics, an annual measurable objective is a performance index set by the commissioner for the 2012-13 school year that increases annually in equal increments so as to reduce by half the gap by the 2016-2017 school year between the performance index of each accountability group in the 2012-13 school year and a performance index of 147.*

- (2) . . .
- (3) . . .
- (4) . . .

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 July 27, 2014.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Ken Slentz, Deputy Commissioner, State Education Department, Office of P-12 Education, State Education Building, 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

1. STATUTORY AUTHORITY:

Education Law section 101 continues existence of Education Department, with Board of Regents as its head, and authorizes Regents to appoint Commissioner of Education as Department’s Chief Administrative Officer, which is charged with general management and supervision of all public schools and educational work of State.

Education Law section 207 empowers Regents and Commissioner to adopt rules and regulations to carry out State education laws and functions and duties conferred on Department.

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of gradu-

ation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 210 authorizes Regents to register domestic and foreign institutions in terms of State standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and professions in the State.

Education Law section 215 authorizes Commissioner to require schools and school districts to submit reports containing such information as Commissioner shall prescribe.

Education Law section 305(1) and (2) provide Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents. Section 305(20) provides Commissioner shall have such further powers and duties as charged by the Regents.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges Commissioner with general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3204(3) provides for required courses of study in the public schools and authorizes SED to alter the subjects of required instruction.

Education Law section 3713(1) and (2) authorize State and school districts to accept federal law making appropriations for educational purposes and authorize Commissioner to cooperate with federal agencies to implement such law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy relating to public school and district accountability.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to partially implement New York State's approved Elementary and Secondary Education Act (ESEA) Flexibility Waiver Renewal Request relating to the methodology for determining Annual Measurable Objectives for school district/school accountability purposes.

At its February 2014 meeting, the Board of Regents directed the State Education Department (SED) to submit a an ESEA Flexibility Waiver Renewal Request to the United States Department of Education (USDE) to amend the provisions of the State's approved ESEA Flexibility Waiver Request related to making adequate yearly progress (AYP); removal criteria for Priority Schools, Focus Districts and Focus Schools; and the methodology used to determine elementary-middle level English language arts and mathematics annual measurable objectives (AMOs).

On April 22, 2014, the USDE approved SED's request to reset the AMOs. USDE review of the remainder of the State's Waiver Renewal application is still pending. In addition, the USDE informed SED that the proposed amendment of section 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools, would not be considered to be an amendment to SED's approved ESEA Flexibility Waiver such that USDE approval would be required.

Consistent with the approved Waiver Renewal Request, the proposed amendment amends paragraph 100.18(j) of the Commissioner's Regulations to revise elementary and middle level AMOs to reflect the results from 2012-13 school year assessments that were based on Common Core Learning Standards aligned to college- and career-readiness.

Consistent with discussions between USDE and SED staff, the proposed amendment would also amend paragraph 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools.

4. COSTS:

Cost to the State: none.

Costs to local government: none.

Cost to private regulated parties: none.

Cost to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment does not impose any direct costs on the State, local governments, private regulated parties or the State Education Department. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to State and Federal standards for

public school and school district accountability and will not impose any additional program, service, duty or responsibility upon local governments.

If a school district does not meet the criteria for removal but one or more of its focus schools meet the criteria for removal, the school district must, for each focus school it petitions for removal of focus designation, identify school(s) not currently identified as priority or focus to replace the school(s) meeting the criteria for removal, except that a school district is not required to:

(a) designate additional new focus schools to replace focus schools meeting the criteria for removal if by so doing the number of focus schools in the district would exceed the number of focus schools that the Commissioner requires a school district to identify pursuant to 100.18(g)(5); or

(b) designate a school as focus that meets the criteria for focus school removal pursuant to 100.18(i) in order to replace a focus school meeting the criteria for removal.

Notwithstanding the above, a school district must identify at least one school as focus school if the school district does not meet the criteria for removal but all of its priority and focus schools meet the criteria for removal.

6. PAPERWORK:

The proposed amendment does not impose any specific recordkeeping, reporting or other paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed amendment is necessary to partially implement New York State's approved ESEA Flexibility Waiver Renewal Request relating to the methodology for determining Annual Measurable Objectives for school district/school accountability purposes. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

9. FEDERAL STANDARDS:

The proposed amendment is necessary to partially implement New York State's approved ESEA Flexibility Waiver Renewal Request relating to the methodology for determining Annual Measurable Objectives for school district/school accountability purposes. The State Education Department used USDE provided guidance provided by the United States Education Department in drafting the amendments to 100.18(i) and (j).

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date. Furthermore, the Department intends to take steps to provide sufficient notice of the proposed amendment to ensure that school districts and students are made aware of the rule changes. The Department will also take steps to share a variety of resources to school districts to provide guidance with implementation.

Regulatory Flexibility Analysis

Small businesses:

The proposed amendment relates to public school and school district accountability and is necessary to partially implement New York State's approved ESEA Waiver Renewal Request relating to the methodology for determining Annual Measurable Objectives for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the ESEA, and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local governments:

1. EFFECT OF RULE:

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the Elementary and Secondary Education Act of 1965, as amended.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to partially implement New York State's approved ESEA Flexibility Waiver Renewal Request relating to the methodology for calculation of Annual Measurable Objectives (AMOs) for purposes of school district/school accountability.

Consistent with the approved Waiver Renewal Request, the proposed amendment amends paragraph 100.18(j) of the Commissioner's Regulations to revise elementary and middle level AMOs to reflect the results from 2012-13 school year assessments that were based on Common Core Learning Standards aligned to college- and career-readiness.

Consistent with discussions between United States Department of Education (USDE) and SED staff, the proposed amendment would also amend paragraph 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools.

If a school district does not meet the criteria for removal but one or more of its focus schools meet the criteria for removal, the school district must, for each focus school it petitions for removal of focus designation, identify school(s) not currently identified as priority or focus to replace the school(s) meeting the criteria for removal, except that a school district is not required to:

(a) designate additional new focus schools to replace focus schools meeting the criteria for removal if by so doing the number of focus schools in the district would exceed the number of focus schools that the Commissioner requires a school district to identify pursuant to 100.18(g)(5); or

(b) designate a school as focus that meets the criteria for focus school removal pursuant to 100.18(i) in order to replace a focus school meeting the criteria for removal.

Notwithstanding the above, a school district must identify at least one school as focus school if the school district does not meet the criteria for removal but all of its priority and focus schools meet the criteria for removal.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional services requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs on school districts or charter schools. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule imposes no technological requirements on school districts. Costs are discussed under the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment relates to public school and school district accountability and is necessary to partially implement New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to the methodology for calculation of Annual Measurable Objectives for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended.

Consistent with the approved Waiver Renewal Request, the proposed amendment amends paragraph 100.18(j) of the Commissioner's Regulations to revise elementary and middle level AMOs to reflect the results from 2012-13 school year assessments that were based on Common Core Learning Standards aligned to college- and career-readiness.

Consistent with discussions between USDE and SED staff, the proposed amendment would also amend paragraph 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools.

The rule has been carefully drafted to meet specific federal and State requirements. The Department intends to take steps to provide sufficient notice of the proposed amendment to ensure that school districts and students are made aware of the rule changes. The Department will also take steps to share a variety of resources to school districts to provide guidance with implementation.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed rule have been provided to District Superintendents with the request that they distribute it to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts and to charter schools.

8. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to partially implement New York State's approved ESEA Waiver Renewal Request relating to the methodology for determining Annual Measurable Objectives for purposes of school district/school accountability. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to public schools, school districts and

charter schools that receive funding as LEAs pursuant to the Elementary and Secondary Education Act (ESEA) of 1965, as amended, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment is necessary to partially implement New York State's approved ESEA Flexibility Waiver Renewal Request relating to the methodology for calculation of Annual Measurable Objectives (AMOs) for purposes of school district/school accountability.

Consistent with the approved Waiver Renewal Request, the proposed amendment amends paragraph 100.18(j) of the Commissioner's Regulations to revise elementary and middle level AMOs to reflect the results from 2012-13 school year assessments that were based on Common Core Learning Standards aligned to college- and career-readiness.

Consistent with discussions between United States Department of Education (USDE) and SED staff, the proposed amendment would also amend paragraph 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools.

If a school district does not meet the criteria for removal but one or more of its focus schools meet the criteria for removal, the school district must, for each focus school it petitions for removal of focus designation, identify school(s) not currently identified as priority or focus to replace the school(s) meeting the criteria for removal, except that a school district is not required to:

(a) designate additional new focus schools to replace focus schools meeting the criteria for removal if by so doing the number of focus schools in the district would exceed the number of focus schools that the Commissioner requires a school district to identify pursuant to 100.18(g)(5); or

(b) designate a school as focus that meets the criteria for focus school removal pursuant to 100.18(i) in order to replace a focus school meeting the criteria for removal.

Notwithstanding the above, a school district must identify at least one school as focus school if the school district does not meet the criteria for removal but all of its priority and focus schools meet the criteria for removal.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs on school districts or charter schools in rural areas. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing staff and resources.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment relates to public school and school district accountability and is necessary to partially implement New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to the methodology for calculation of Annual Measurable Objectives for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended.

Consistent with the approved Waiver Renewal Request, the proposed amendment amends paragraph 100.18(j) of the Commissioner's Regulations to revise elementary and middle level AMOs to reflect the results from 2012-13 school year assessments that were based on Common Core Learning Standards aligned to college- and career-readiness.

Consistent with discussions between USDE and SED staff, the proposed amendment would also amend paragraph 100.18(i)(2) to allow certain Focus Schools to be removed from accountability designation without requiring that the removed schools be replaced by other schools.

The rule has been carefully drafted to meet specific federal and State requirements. Since these requirements apply to all local educational agencies in the State that receive ESEA funds, it is not possible to adopt different standards for school districts and charter schools in rural areas. The Department intends to take steps to provide sufficient notice of the proposed amendment to ensure that school districts and students are made aware of the rule changes. The Department will also take steps to share a variety of resources to school districts to provide guidance with implementation.

5. RURAL AREA PARTICIPATION:

The proposed amendment was submitted for review and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule

shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement to partially implement New York State's approved ESEA Waiver Renewal Request relating to the methodology for determining Annual Measurable Objectives for purposes of school district/school accountability. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment relates to public school and school district accountability and is necessary to partially implement New York State's approved Elementary and Secondary Education Act (ESEA) Waiver Renewal Request relating to the methodology for determining Annual Measurable Objectives for purposes of school district/school accountability. The State and local educational agencies (LEAs) are required to comply with the ESEA as a condition to their receipt of federal funds under Title I of the ESEA Act of 1965, as amended.

The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the ESEA, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Flexibility Relating to Teacher Performance Assessment (edTPA)

I.D. No. EDU-19-14-00021-EP

Filing No. 344

Filing Date: 2014-04-29

Effective Date: 2014-04-29

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

Proposed Action: Amendment of sections 52.21, 80-3.3, 80-3.4 and 80-5.13 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1)

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

Specific reasons underlying the finding of necessity: As discussed at the December 2012 and October 2013 Regents meetings, the Department has partnered with the Teacher Performance Assessment Consortium (TPAC) and is utilizing the edTPA as its teacher performance assessment, which was developed by the Stanford Center for Assessment, Learning and Equity (SCALE). The edTPA is a performance-based assessment designed to measure a candidate's readiness to teach by assessing teaching behaviors designed to foster student learning such as the candidate's ability to demonstrate effective planning, instruction, and assessment. In order for candidates to complete the edTPA, they need to submit a video of their performance in the classroom.

We are nearly five years into the implementation of the new and revised certification examinations. The Department has already provided a one year extension of the teacher performance assessment and \$ 11.5 million to CUNY, SUNY, and the independent colleges to support the provision of faculty professional development on topics such as the Common Core and the new certification examinations. However, in spite of the nearly five years of awareness raising, professional development offerings related to transition to the new assessment, and the one year extension that was already provided for programs and candidates, in order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the edTPA, the proposed amendment attempts to provide additional flexibility for candidates who take and fail the edTPA on their first attempt. The proposed amendment authorizes the Commissioner to issue an initial certificate to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2015, except he/she does not receive a satisfactory passing score on the teacher performance assessment, if subsequent to receiving a score for the teacher performance assessment and prior to June 30, 2015, the candidate receives a satisfactory

level of performance on the written assessment of teaching skills examination in lieu of a satisfactory level of performance on the teacher performance assessment.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the September 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September 2014 Regents meeting is October 1, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to ensure that teacher candidates who will be applying for certification on or after May 1, 2014 and prior to June 30, 2015, have timely and sufficient notice that, if they fail the edTPA and subsequently take and pass the ATS-W prior to June 30, 2015, they may receive an initial certificate.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the September 2014 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.

Subject: Flexibility Relating to Teacher Performance Assessment (edTPA).

Purpose: To provide teacher Candidates, who apply for teacher certification prior to June 30, 2015 and who take and fail the teacher performance assessment (edTPA), with the option of obtaining an initial certificate if the candidate passes the ATS-W Prior to June 30, 2015 and subsequent to receiving his/her score on the edTPA.

Text of emergency/proposed rule: 1. Subclause (1) of clause (b) of subparagraph (iv) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective April 29, 2014, to read as follows:

(1) The department shall conduct a registration review in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed; *provided that for the 2014-2015 and 2015-2016 academic years, the department shall not conduct a registration review based solely upon students having less than an 80 percent passage rate on the teacher performance assessment. However, programs with less than an 80 percent passage rate for the 2013-2014 and 2014-2015 academic years on the teacher performance assessment will be required to submit a professional development plan to the Department that describes how the program plans to improve the readiness of faculty and pass rate for candidates on the teacher performance assessment.* For purposes of this clause, students who have satisfactorily completed the institution's program shall mean students who have met each educational requirement of the program, excluding any institutional requirement that the student pass each required examination of the New York State teacher certification examinations for a teaching certificate in order to complete the program. Students satisfactorily meeting each educational requirement may include students who earn a degree or students who complete each educational requirement without earning a degree. For determining this percentage, the department shall consider the performance on each certification examination of those students completing an examination not more than five years before the end of the academic year in which the program is completed or not later than the September 30th following the end of such academic year, academic year defined as July 1st through June 30th, and shall consider only the highest score of individuals taking a test more than once.

2. Paragraph (2) of subdivision (b) of section 80-3.3 of the Regulations of the Commissioner of Education is amended, effective April 29, 2014, to read as follows:

(2) Examination. The candidate shall meet the examination requirement by meeting the requirements in one of the following subparagraphs:

(i)(a) Except as otherwise provided in this section, for candidates who have completed all requirements for initial certification on or before April 30, 2014 and who apply for certification on or before April 30, 2014, the candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test, written assessment of teaching skills, and content specialty test(s) in the area of the certificate on or before April 30, 2014, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test. Instead of meeting the examination requirements of this subdivision, a candidate applying for certification on or before April 30, 2014 may

achieve a satisfactory level of performance on the set of certification examinations described in subdivision (b) of this section, *except that such candidate may receive a satisfactory level of performance on either the teacher performance assessment or the written assessment of teaching skills.*

(b) Except as otherwise provided in this section, for candidates applying for certification on or after May 1, 2014 or candidates who applied for certification on or before April 30, 2014 but did not meet all the requirements for an initial certificate on or before April 30, 2014, such candidates shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination teacher performance assessment, the educating all students test, the academic literacy skills test and the content specialty test(s) in the area of the certificate, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test or the teacher performance assessment and a candidate seeking an initial certificate in the title of Educational Technology Specialist (all grades) shall not be required to achieve a satisfactory level of performance on the teacher performance assessment. *Provided however, if a candidate applies for and meets all the requirements for an initial certificate on or before June 30, 2015 (including completing and submitting for scoring the teacher performance assessment), except the candidate does not receive a satisfactory score on the teacher performance assessment, the candidate may meet the requirements for an initial certificate, if subsequent to receiving a score for the teacher performance assessment and prior to June 30, 2015, a candidate receives a satisfactory level of performance on the written assessment of teaching skills examination in lieu of a satisfactory level of performance on the teacher performance assessment.*

- (c) . . .
- (ii) . . .
- (c) . . .

3. Section 80-3.4 of the Regulations of the Commissioner of Education is amended, effective April 29, 2014, as follows:

Section 80-3.4. Requirements for the professional certificate in the classroom teaching service.

(a) . . .
 (b) Requirements for professional certificates in all titles in classroom teaching service, except in a specific career and technical subject within the field of agriculture, business and marketing, family and consumer sciences, health, a technical area, or a trade (grades 7 through 12). The candidate shall meet the requirements in each of the following paragraphs:

- (1) . . .
- (2) . . .
- (3) Examination.
 - (i) (a) . . .

(b) Candidates who hold a transitional C certificate for career changers and others holding a graduate academic or graduate professional degree, pursuant to the requirements of section 80-5.14 this Part, and who apply for certification on or after May 1, 2014 or candidates who apply for professional certification on or before April 30, 2014 but do not meet all the requirements for a professional certificate on or before April 30, 2014 shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination teacher performance assessment. *Provided however, if a candidate applies for and meets all the requirements for a professional certificate on or before June 30, 2015 (including completing and submitting for scoring the teacher performance assessment), except the candidate does not receive a satisfactory score on the teacher performance assessment, the candidate may meet the requirements for a professional certificate, if subsequent to receiving a score for the teacher performance assessment and prior to June 30, 2015, a candidate receives a satisfactory level of performance on the written assessment of teaching skills examination in lieu of a satisfactory level of performance on the teacher performance assessment.*

- (ii) . . .
- (c) . . .

4. Subparagraph (ii) of paragraph (1) of subdivision (b) of section 80-5.13 of the Regulations of the Commissioner of Education is amended, effective April 29, 2014, to read as follows:

- (ii) Examination.

(a) A candidate who applies for an initial certificate on or before April 30, 2014, and who has completed all other requirements for an initial certificate except completion of their registered Transitional B program, on or before April 30, 2014 shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher certification examination written assessment of teaching skills test, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable, on or before April 30, 2014 or a satisfactory level of performance on teacher

performance assessment, if applicable for that certificate title, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable.

(b) A candidate who applies for [certification] *an initial certificate* on or after May 1, 2014 or who applies for [certification] *an initial certificate* on or before April 30, 2014 but does not meet all the requirements for [a professional] *an initial certificate* on April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the teacher performance assessment, if applicable for that certificate title, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable. *Provided however, if a candidate applies for and meets all the requirements for an initial certificate on or before June 30, 2015 (including completing and submitting for scoring the teacher performance assessment), except the candidate does not receive a satisfactory score on the teacher performance assessment, the candidate may meet the requirements for an initial certificate, if subsequent to receiving a score for the teacher performance assessment and prior to June 30, 2015, a candidate receives a satisfactory level of performance on the written assessment of teaching skills examination in lieu of a satisfactory level of performance on the teacher performance assessment.*

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 July 27, 2014.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, NYS Education Department, Office of Higher Education, EB Room 979, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: regcomments@mail.nysed.gov

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

1. STATUTORY AUTHORITY:

Education Law section 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Education Law section 305(1) and (2) empowers the Commissioner of Education to be the chief executive officer of the state system of education and authorizes the Commissioner to execute educational policies determined by the Regents.

Education Law section 3001(2) establishes certification by the State Education Department as a qualification to teach in the State's public schools.

Education Law section 3004(1) authorizes the Commissioner of Education to prescribe regulations governing the certification of teachers.

Education Law section 3006(1)(b) provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Education Law section 3009(1) provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part thereof, be collected by a district tax except as provided in the Education Law.

2. LEGISLATIVE OBJECTIVES:

The amendment carries out the legislative objectives of the above-referenced statutes by providing flexibility relating to the teacher performance assessment (edTPA), a certification examination that is required for certain teachers who are seeking to be certified in New York State.

3. NEEDS AND BENEFITS:

At the November and December 2009 Board of Regents meetings, the Board approved a number of initiatives for the purpose of transforming teaching and learning and school leadership in New York State. The Board of Regents discussion included the development of new examinations, creation of performance assessments for teachers and school building leaders, and the revision of the current Content Specialty Tests (CSTs). The teacher performance assessment was intended to measure candidates' readiness for the classroom consistent with the New York State Teaching Standards, which were adopted with extensive stakeholder input.

In May 2010, the Board reaffirmed the direction for the new examinations, which includes the Academic Literacy Skills Test (ALST), the Educating All Students test (EAS), the edTPA, and the School Building Leader performance assessment (SBL), as well as revisions to the CSTs. The new certification examinations were described in New York's Race to the Top (RTTT) application in 2010, are part of New York's RTTT scope of work, and were scheduled to be implemented in May 2013. Stakeholder

engagement – particularly teacher preparation program faculty – in the development of the new teacher performance assessment began in 2010. The NYS-developed performance assessment was similar in construct and was field tested twice (spring and fall of 2011) and over 250 faculty members and over 550 students participated. Work continued on the NYS-developed performance assessment until we learned about the opportunity to partner with SCALE to implement the edTPA. NYS also conducted an edTPA statewide field test in 2013. At its February 2012 meeting, the Board of Regents approved a shift in the implementation date of the new certification examinations (edTPA, ALST, EAS and the SBL) from May 1, 2013 to May 1, 2014. This implementation date was selected in order to provide educator preparation programs with an additional year to prepare teaching candidates, while at the same time ensuring that the timeframes in the State's RTTT application are met.

As discussed at the December 2012 and October 2013 Regents meetings, the Department partnered with the Teacher Performance Assessment Consortium (TPAC) in February 2012 and is utilizing the edTPA as its teacher performance assessment, which was developed by the Stanford Center for Assessment, Learning and Equity (SCALE). The edTPA is a multiple-choice assessment system aligned to state and national standards, including the Common Core State Standards and the Interstate Teacher Assessment and Support Consortium (InTASC). Most importantly, the edTPA is on the cutting edge of teacher candidate assessment practices nationally and has been adopted by 34 states and the District of Columbia. The assessment is based on the National Board for Professional Teaching Standards (NBPTS). The edTPA is designed to measure a candidate's readiness to teach by assessing teaching behaviors designed to foster student learning such as the candidate's ability to demonstrate effective planning, instruction, and assessment. In order for candidates to complete the edTPA, they need to submit a video of their performance in the classroom.

Early on, the Department established strong systems of support to ensure that each college and university had the information needed to successfully prepare its candidates. In April 2012, the Office of Higher Education announced the creation of a set of agreements with SUNY, CUNY, and the Commission on Independent Colleges and Universities (cIcu) to provide professional development to enhance collaboration between schools of education and colleges of arts and sciences around the Regents Reform Agenda. The project has funded trainings focused on the Common Core Learning Standards, Data-Driven Instruction, Clinically Rich Teacher Preparation, the new certification examinations, and APPR. Funding from RTTT was used to provide a total of \$10 million to SUNY, CUNY, and cIcu. In November 2013, the Office of Higher Education offered SUNY, CUNY and cIcu an additional \$1.5 million total to continue faculty professional development using RTTT funding. The faculty development scope of work is outlined and fully described in each sector's work plan, available online at <http://www.highered.nysed.gov/mou.html>.

Statewide field tests of the edTPA – with optional campus participation – occurred during the 2012-13 academic year. Fifty-one campuses participated.

In January 2013, the Governor's Education Reform Commission, recognizing the need for excellent teachers, released its preliminary report and recommended the establishment of a "bar" like exam for entry into the teaching and principal profession. In March 2013, the state budget was enacted with a provision requiring the creation of standards for a teacher and principal bar exam certification program.

We are five years into the implementation of the new and revised certification examinations. The Department has already provided a one-year extension and \$11.5 million to CUNY, SUNY, and cIcu to support the provision of faculty professional development on topics such as the Common Core and the new certification examinations. Further, with a modest, but meaningful number of operational test takers so far, (approximately 1,660), the Department has estimated that the pass rate is approximately 83%.

However, in an effort to address the concerns raised by the field, the proposed amendment provides flexibility to teacher candidates who have taken and failed the edTPA. Specifically, the proposed amendment authorizes the Commissioner to issue to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2015, except he/she does not receive a satisfactory passing score on the teacher performance assessment, if required, may be issued initial certificate; provided that subsequent to receiving a score for the teacher performance assessment and prior to June 30, 2015, the candidate receives a satisfactory level of performance on the written assessment of teaching skills examination in lieu of a satisfactory level of performance on the teacher performance assessment. Transitional C certificate holders (generally Career and Technical Education teachers who are career changers or hold a graduate academic or professional degree) would be provided similar flexibility in meeting the edTPA requirement for a professional certificate.

In addition, under the current Section 52.21(b)(2)(iv) of the Commis-

sioner's Regulations, an institution shall be required to submit a comprehensive corrective action plan in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed. If the Department does not approve the corrective action plan, the institution shall be subject to denial of re-registration in accordance with the requirements of Section 52.23 of the Commissioner's Regulations. The Department recommends that the 80% passage requirement be waived for students who take the edTPA in the 2013-2014 and 2014-2015 academic years. Instead, programs with fewer than 80% of students who pass the edTPA in these academic years will be required to submit a professional development plan to the Department that describes how the program plans to improve the readiness of faculty and pass rate for candidates on the edTPA. The Department will not use edTPA scores in the State's institutional profiles until the 2015-2016 academic year.

4. COSTS:

Cost to the State: none.

Costs to local government: none.

Cost to private regulated parties: none.

Cost to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department. The proposed amendment will provide additional flexibility for candidates who take and fail the edTPA on their first attempt.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES.

6. PAPERWORK:

There are no additional paperwork requirements beyond those currently imposed.

7. DUPLICATION:

The amendment does not duplicate any existing State or Federal requirements.

8. ALTERNATIVES:

There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that establish requirements for the certification of teachers for service in the State's public schools.

10. COMPLIANCE SCHEDULE:

The proposed amendment does not impose any additional compliance requirements or costs and instead provides additional flexibility for candidates who take and fail the edTPA on their first attempt. It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

In order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the edTPA, the proposed amendment attempts to provide additional flexibility for candidates who take and fail the edTPA on their first attempt. The proposed amendment authorizes the Commissioner to issue to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2015, except he/she does not receive a satisfactory passing score on the teacher performance assessment, if required, may be issued initial certificate; provided that subsequent to receiving a score for the teacher performance assessment and prior to June 30, 2015, the candidate receives a satisfactory level of performance on the written assessment of teaching skills examination in lieu of a satisfactory level of performance on the teacher performance assessment. Transitional C certificate holders (generally Career and Technical Education teachers who are career changers or hold a graduate academic or professional degree) would be provided similar flexibility in meeting the edTPA requirement for a professional certificate.

In addition, under the current section 52.21(b)(2)(iv) of the Commissioner's Regulations, an institution shall be required to submit a comprehensive corrective action plan in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed. If the Department does not approve the corrective action plan, the institution shall be subject to denial of re-registration in accordance with the requirements of Section 52.23 of the Commissioner's Regulations. The Department recommends that the 80% passage requirement be waived for students who take the edTPA in the 2013-2014 and 2014-2015 academic years. Instead, programs with fewer than 80% of students who pass the edTPA in these academic years will be required to submit a professional development plan to the Department that

describes how the program plans to improve the readiness of faculty and pass rate for candidates on the edTPA. The Department will not use edTPA scores in the State's institutional profiles until the 2015-2016 academic year.

The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect teacher candidates who are applying for an initial certificate and who have completed all the requirements for certification prior to June 1, 2015, except the teacher performance assessment (edTPA) and registered programs with less than an 80 percent passage rate on the edTPA, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

2. REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

In order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the edTPA, the proposed amendment attempts to provide additional flexibility for candidates who take and fail the edTPA on their first attempt. The proposed amendment authorizes the Commissioner to issue to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2015, except he/she does not receive a satisfactory passing score on the teacher performance assessment, if required, may be issued initial certificate; provided that subsequent to receiving a score for the teacher performance assessment and prior to June 30, 2015, the candidate receives a satisfactory level of performance on the written assessment of teaching skills examination in lieu of a satisfactory level of performance on the teacher performance assessment. Transitional C certificate holders (generally Career and Technical Education teachers who are career changers or hold a graduate academic or professional degree) would be provided similar flexibility in meeting the edTPA requirement for a professional certificate.

In addition, under the current section 52.21(b)(2)(iv) of the Commissioner's Regulations, an institution shall be required to submit a comprehensive corrective action plan in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed. If the Department does not approve the corrective action plan, the institution shall be subject to denial of re-registration in accordance with the requirements of Section 52.23 of the Commissioner's Regulations. The Department recommends that the 80% passage requirement be waived for students who take the edTPA in the 2013-2014 and 2014-2015 academic years. Instead, programs with fewer than 80% of students who pass the edTPA in these academic years will be required to submit a professional development plan to the Department that describes how the program plans to improve the readiness of faculty and pass rate for candidates on the edTPA. The Department will not use edTPA scores in the State's institutional profiles until the 2015-2016 academic year.

The proposed amendment does not require any professional services to comply.

3. COSTS:

The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department. The proposed amendment will provide additional flexibility for candidates who take and fail the edTPA on their first attempt.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs and instead provides additional flexibility for candidates who take and fail the edTPA on their first attempt. The State Education Department does not believe any changes for candidates who live or work in rural areas is warranted because uniform standards for certification are necessary across the State.

5. RURAL AREA PARTICIPATION:

The State Education Department has sent the proposed amendment to the Rural Advisory Committee, which has members who live or work in rural areas across the State.

Job Impact Statement

In order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty

development around the edTPA, the proposed amendment attempts to provide additional flexibility for candidates who take and fail the edTPA on their first attempt. The proposed amendment authorizes the Commissioner to issue to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2015, except he/she does not receive a satisfactory passing score on the teacher performance assessment, if required, may be issued initial certificate; provided that subsequent to receiving a score for the teacher performance assessment and prior to June 30, 2015, the candidate receives a satisfactory level of performance on the written assessment of teaching skills examination in lieu of a satisfactory level of performance on the teacher performance assessment.

In addition, under the current section 52.21(b)(2)(iv) of the Commissioner's Regulations, an institution shall be required to submit a comprehensive corrective action plan in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed. If the Department does not approve the corrective action plan, the institution shall be subject to denial of re-registration in accordance with the requirements of Section 52.23 of the Commissioner's Regulations. The Department recommends that the 80% passage requirement be waived for students who take the edTPA in the 2013-2014 and 2014-2015 academic years. Instead, programs with fewer than 80% of students who pass the edTPA in these academic years will be required to submit a professional development plan to the Department that describes how the program plans to improve the readiness of faculty and pass rate for candidates on the edTPA. The Department will not use edTPA scores in the State's institutional profiles until the 2015-2016 academic year.

Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

Annual Professional Performance Reviews (APPR)

I.D. No. EDU-08-14-00023-ERP

Filing No. 342

Filing Date: 2014-04-29

Effective Date: 2014-05-10

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

Action Taken: Amendment of section 8.4 and Subpart 30-2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1), (2) and 3012-c; and L. 2014, ch. 56, part AA, subparts A, E and G

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

Specific reasons underlying the finding of necessity: Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 30-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5) for revised rule makings, is the September 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September 2014 meeting, would be October 1, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to timely implement the provisions of Chapter 56 of the Laws of 2014 and to ensure that the emergency rule adopted at the March Regents meeting remains continuously in effect until it can be adopted as a permanent rule.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the September 2014 Regents meeting, which is the first scheduled meeting after expiration of the 30-day public comment period mandated by the State Administrative Procedure Act for revised rulemakings.

Subject: Annual Professional Performance Reviews (APPR).

Purpose: To implement Chapter 56 of the Laws of 2014 relating to traditional standardized assessments and Annual Professional Performance Review plans, the expedited review process for material changes to eliminate unnecessary tests, and establishing caps on testing time for State tests (1%) and other standardized tests (1%), and for test preparation time under standardized conditions (2%) based on the minimum required annual instructional hours for such grade.

Text of emergency/revised rule: 1. That the emergency rule amending Subpart 30-2 of the Rules of the Board of Regents that was adopted by the Board of Regents as an emergency measure at the March 10-11 meeting is repealed, effective May 10, 2014.

2. Subdivision (b) of section 30-2.2 of the Rules of the Board of Regents shall be amended, effective May 10, 2014, to read as follows:

(b) Approved student assessment shall mean a standardized student assessment approved by the commissioner for inclusion in the State Education Department's lists of approved standardized student assessments for the locally selected measures subcomponent and/or to measure student growth in non-tested subjects for the State assessment or other comparable measures subcomponent or for grades kindergarten through two, an assessment that is not a traditional standardized assessment that meets the requirements in paragraph (1) of this subdivision.

(1) Approved Assessments in grades kindergarten through two.

(i) Effective March 2, 2014, all standardized assessments for students in kindergarten through grade two shall be removed from the actual list of approved student assessments for use in annual professional performance review plans for the 2014-2015 school year and thereafter and traditional standardized assessments in grades kindergarten through grade two will no longer be approved assessments for these grades. However, an assessment that is not a traditional standardized assessment shall be considered an approved student assessment if the superintendent, district superintendent, or chancellor of a school district/BOCES that chooses to use such assessment certifies in its APPR plan that the assessment is a not a traditional standardized assessment [, as defined by the Commissioner in guidance,] and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance.

(ii) Any school district or BOCES with an annual professional performance review plan approved or determined by the Commissioner [for use in the 2013-2014 school year] prior to April 1, 2014 that provides for the use of an approved student assessment for students in kindergarten through grade two remains in effect in accordance with Education Law § 3012-c (2)(l) and the district or BOCES may continue to use such assessments until a material change is made and approved by the Commissioner to eliminate such use.

3. Subdivision (v) of section 30-2.2 of the Rules of the Board of Regents shall be renumbered to subdivision (w) of section 30-2.2 of the Rules of the Board of Regents, effective May 10, 2014.

4. A new subdivision (v) is added to section 30-2.2 of the Rules of the Board of Regents, effective May 10, 2014, to read as follows:

(v) Traditional standardized assessment shall mean a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized assessments are those that require the student (and not the examiner/assessor) to directly use a "bubble" answer sheet. Traditional standardized assessments do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by federal law; and/or assessments used for diagnostic or formative purposes, including but not limited to assessments used for diagnostic screening required by Education Law § 3208(5).

5. Paragraph (2) of subdivision (a) of section 30-2.3 of the Rules of the Board of Regents shall be amended, effective May 10, 2014, to read as follows:

(2)(i) By July 1, 2012, the governing body of each school district and BOCES shall adopt a plan, on a form prescribed by the Commissioner, for the annual professional performance review of all of its classroom teachers and building principals in accordance with the requirements of Education Law § 3012-c and this Subpart, and shall submit such plan to the Commissioner for approval. The plan may be an annual or multi-year plan, for the annual professional performance review of all of its classroom teachers and building principals. The Commissioner shall approve or reject the plan by September 1, 2012, or as soon as practicable thereafter. The Commissioner may also reject a plan that does not rigorously adhere to the provisions of Education Law § 3012-c and the requirements of this Subpart. Should any plan be rejected, the Commissioner shall describe each deficiency in the submitted plan and direct that each such deficiency be resolved through collective bargaining to the extent required under

article fourteen of the Civil Service Law. If any material changes are made to the plan, the school district or BOCES must submit the material changes, on a form prescribed by the Commissioner, to the Commissioner for approval.

(ii) If material changes are made to a plan that solely relate to the elimination of unnecessary assessments on students, the Commissioner shall expedite his or her review of such material changes and solely review those sections of the plan that relate to the eliminated assessments to ensure compliance with Education Law § 3012-c and this Subpart, provided that the superintendent, district superintendent or chancellor shall provide a written explanation of the changes made to the plan, on a form prescribed by the Commissioner, and certify that no other material changes have been made to the plan. The Commissioner shall complete the review of material changes properly and completely submitted within 10 business days of submission. In order to be considered properly and completely submitted, the submission must use the form prescribed by the Commissioner and meet the requirements of Education Law § 3012-c and this Subpart, and contain all required information including all appropriate signatures with appropriate dates.

(iii) To the extent that by July 1, 2012 or by July 1 of any subsequent year, if all of the terms of the plan have not been finalized as a result of unresolved collective bargaining negotiations, the entire plan shall be submitted to the Commissioner upon resolution of all of its terms, consistent with Article 14 of the Civil Service Law.

6. A new paragraph (4) shall be added to subdivision (a) of section 30-2.3 of the Rules of the Board of Regents, effective May 10, 2014, to read as follows:

(4) Any plan submitted to the Commissioner on or after March 2, 2014 for use in the 2014-2015 school year and thereafter shall include a signed certification, on a form prescribed by the Commissioner, by the superintendent, district superintendent or chancellor, attesting that [no more than one percent of total instructional time in each classroom or program of the district or BOCES is spent taking any locally determined traditional standardized third-party assessments from the approved list or traditional standardized district, regional or BOCES developed assessments for purposes of Education Law § 3012-c. This paragraph shall not apply to assessments used for formative or diagnostic purposes];

(i) the amount of time devoted to traditional standardized assessments that are not specifically required by state or federal law for each classroom or program of the grade does not exceed, in the aggregate, one percent of the minimum in required annual instructional hours for such classroom or program of the grade; and

(ii) the amount of time devoted to test preparation under standardized testing conditions for each grade does not exceed, in the aggregate, two percent of the minimum required annual instructional hours for such grade.

Time devoted to teacher administered classroom quizzes or exams, portfolio reviews, or performance assessments shall not be counted towards the limits established by this subdivision. In addition, formative and diagnostic assessments shall not be counted towards the limits established by this subdivision and nothing in this subdivision shall be construed to supersede the requirements of a section 504 plan of a qualified student with a disability or federal law relating to English language learners or the individualized education program of a student with a disability.

7. Section 8.4 of the Rules of the Board of Regents is amended, effective May, 10, 2014, to read as follows:

§ 8.4 Courses and examinations in public schools.

(a) The commissioner shall establish regulations governing the following:

[(a)] (1) approved courses of study in public schools;

[(b)] (2) subjects in which Regents examinations are given in such schools;

[(c)] (3) the method of rating answer papers;

[(d)] (4) the credits to be allowed for subjects in which Regents examinations are not regularly offered.

(b) The amount of time devoted to required State assessments administered by or on behalf of the State and developed by the State directly or by contract for each grade shall not exceed, in the aggregate, one percent of the minimum required annual instructional hours for such grade. Nothing in this subdivision shall be construed to supersede the requirements of a section of the 504 plan of a qualified student with disability or federal law relating to English Language Learners or the individualized education program of a students with disabilities.

8. Subparagraph (iii) of paragraph (1) of subdivision (b) of section 30-2.5 of the Rules of the Board of Regents shall be amended, effective May 10, 2014, to read as follows:

(iii) Except as otherwise provided in subparagraphs (i) and (ii) of this paragraph, for classroom teachers who teach one of the core subjects, as defined in this subparagraph, where there is no approved growth or

value-growth model at that grade level or in that subject, the school district or BOCES shall measure student growth based on a State-determined district-or BOCES-wide student growth goal setting process using a State assessment if one exists, or a Regents examination or department-approved alternative examination as described in section 100.2(f) of this Title (including, but not limited to, advanced placement examinations, International Baccalaureate examinations, SAT II, etc.). If there is no State assessment or Regents examination for these grades/subjects, the district or BOCES must measure student growth based on the State determined goal-setting process with an approved student assessment, or a department-approved alternative examination as described in section 100.2(f) of this Title or a district, regional or BOCES developed assessment that is rigorous and comparable across classrooms. For purposes of this subparagraph, core subjects shall be defined as science [and social studies in grades six to] grade eight and high school courses in English language arts, mathematics, science and social studies that lead to a Regents examination in the 2010-2011 school year, or a State assessment in the 2012-2013 school year or thereafter. A school district or BOCES shall generate a score from 0 to 20 points for this subcomponent.

9. A new subdivision (e) shall be added to section 30-2.5 of the Rules of the Board of Regents shall be amended, effective May 10, 2014, to read as follows:

(e) Notwithstanding any other provision of this Subpart to the contrary, no annual professional performance review plan shall be approved by the Commissioner for use in the 2014-2015 school year or thereafter that provides for the administration of traditional standardized assessments to students in kindergarten through grade two that are not being used for diagnostic purposes or are required to be administered by federal law, including but not limited to assessments developed by any vendor, third-party or other comparable entity; except that nothing in this subdivision shall preclude the use of school- or-BOCES-wide, group or team results using State assessments that are administered to students in higher grades in the school or a district, regional or BOCES developed student assessment that is developed in collaboration with a vendor, if otherwise allowed under this section or guidelines of the Commissioner. However, this subdivision shall not apply to any annual professional performance review plan approved or determined by the Commissioner for use in the 2013-2014 school year which remains in effect in the 2014-2015 school year and thereafter in accordance with Education Law § 3012-c(2)(l).

10. Subdivision (a) of section 30-2.8 of the Rules of the Board of Regents shall be amended, effective May 10, 2014, to read as follows:

(a) Approval of student assessments for the evaluation of classroom teachers and building principals. [An] Except as otherwise provided in subdivision (e) of this section for assessments in grades kindergarten through two, an assessment provider who seeks to place an assessment on the list of approved student assessments under this section shall submit to the Commissioner a written application in a form and within the time prescribed by the Commissioner.

11. Subdivision (e) of section 30-2.8 of the Rules of the Board of Regents shall be amended, effective May 10, 2014, to read as follows:

(e) Pursuant to section 30-2.2 of this Subpart, effective March 2, 2014, the Commissioner will remove the names of any traditional standardized assessments approved for use in kindergarten through grade two from the list of approved assessments for use in the 2014-2015 school year and thereafter. However, an assessment that is not a traditional standardized assessment may be considered an approved student assessment if the superintendent, district superintendent, or chancellor certifies in its plan that the assessment is a not a traditional standardized assessment [, as defined by the Commissioner in guidance,] and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on February 26, 2014, I.D. No. EDU-08-14-00023-EP. The emergency rule will expire June 27, 2014.

Revised rule making(s) were previously published in the State Register on March 26, 2014.

Emergency rule compared with proposed rule: Substantial revisions were made in sections 8.4, 30-2.2(b)(1), (v), (w), 30-2.3(a)(2) and (4).

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, Office of Higher Education, Room 979, Washington Avenue, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: regcomments@mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the *State Register* on March 26, 2014, the following substantial revisions were made to the proposed rule:

Regents Rule section 30-2.2(b)(1)(i) and (ii) are amended to clarify that traditional standardized assessments will be defined in regulation and not in guidance and to further clarify that any school district or BOCES with an APPR plan approved or determined by the Commissioner prior to April 1, 2014 shall remain in effect and the district may continue to use such assessment until a material change is made and approved to eliminate such use in order to conform to Ch.56, L.2013.

Section 30-2.2(v) is renumbered to (w) and a new (v) is added to define traditional standardized assessment.

Section 30-2.3(a)(2) is revised to clarify that if material changes are made to a plan that solely relate to the elimination of unnecessary assessments on students, the Commissioner shall expedite his/her review of such material changes and solely review those sections of the plan relating to the eliminated assessments to ensure compliance with Education Law 3012-c and the regulations, provided that the superintendent, district superintendent or chancellor shall provide a written explanation of the changes made to the plan, on a form prescribed by the Commissioner, and certify that no other material changes have been made to the plan. This paragraph conforms to Ch.56, L.2013, which requires the Commissioner complete the review of material changes properly and completely submitted within 10 business days of submission. The amendment provides that in order to be considered properly and completely submitted, the submission must use the form prescribed by the Commissioner and meet the requirements of Education Law 3012-c and the regulations and contain all required information including all appropriate signatures with appropriate dates.

Section 30-2.3(a)(4) was revised to conform to Ch.56, L.2013 to provide that any plan submitted for the 2014-2015 school year and thereafter must include a signed certification, attesting that the amount of time devoted to traditional standardized assessments that are not specifically required by state or federal law for each classroom or program of the grade does not exceed, in the aggregate, one percent of the minimum in required annual instructional hours for such classroom or program of the grade and the amount of time devoted to test preparation under standardized testing conditions for each grade does not exceed, in the aggregate, two percent of the minimum required annual instructional hours for such grade. Time devoted to teacher administered classroom quizzes or exams, portfolio reviews, or performance assessments shall not be counted towards the limits. In addition, formative and diagnostic assessments shall not be counted towards the limits established by this subdivision and nothing in this subdivision shall be construed to supersede the requirements of a § 504 plan of a qualified student with disability or federal law relating to English language learners (ELL) or the individualized education program (IEP) of a student with disability.

Section was amended to conform to Ch.56, L.2013 to provide that any plan submitted for the 2014-2015 school year and thereafter must include a signed certification, attesting that the amount of time devoted to required State assessments administered by or on behalf of the State for each grade does not exceed, in the aggregate, one percent of the minimum in required annual instructional hours for such grade; provided nothing shall be construed to supersede the requirements of a § 504 plan of a qualified student with disability or federal law relating to ELL or the IEP of a student with disability.

The above revisions require revisions to the Statutory Authority, Legislative Objectives, Needs and Benefits and Paperwork sections of the previously published Regulatory Impact Statement.

1. STATUTORY AUTHORITY:

Education Law 101 charges the Department with the general management and supervision of the educational work of the State and establishes the Regents as head of the Department.

Education Law 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Education Law 215 authorizes the Commissioner to require reports from schools under State educational supervision.

Education Law 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies. Section 305(2) provides the Commissioner with general supervision over schools and authority to advise and guide school district officers in their duties and the general management of their schools.

Education Law 3012-c establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES).

Subparts A, E and G of Part AA of Chapter 56 of the Laws of 2014 prohibit traditional standardized testing in grades Pre-K through 2; provide for an expedited review process by the Commissioner of material changes to APPR plans to remove unnecessary tests if the material changes are properly and completely submitted to the Commissioner; and prohibit more than one percent of the minimum required instructional time in a grade to be spent on State assessments, no more than one percent on

traditional standardized assessments and no more than two percent of such time spent on test preparation.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above authority vested in the Regents and Commissioner to carry into effect State educational laws and policies and Ch.56, L.2014, and is necessary to support the commitment made by the Regents and Commissioner to ensure that students are not unnecessarily burdened by over-testing or testing that takes away from the core instructional time in our classrooms and schools. Further, these amendments help to ensure that our youngest students in kindergarten through second grade are not subject to traditional standardized testing.

3. NEEDS AND BENEFITS:

The proposed rule makes a series of amendments to Subpart 30-2 of the Regents Rules, to conform to Ch.56, L.2014 and to support the commitment made by the Regents and Commissioner to ensure that students are not unnecessarily burdened by over-testing or testing that takes away from the core instructional time in our classrooms and schools. Further, these amendments help to ensure that our youngest students in kindergarten through second grade are not subject to traditional standardized testing.

First, the rule provides that no APPR plan shall be approved by the Commissioner for use in the 2014-2015 school year or thereafter that provides for the administration of traditional standardized assessments to students in kindergarten through grade two that are not being used for diagnostic purposes or are required to be administered by federal law, including but not limited to assessments developed by any vendor, third party or other comparable entity. The rule does not preclude the use of school- or BOCES-wide, group, or team results using State assessments that are administered to students in higher grades in the school or a district, regional or BOCES-developed student assessment that is developed in collaboration with a vendor, if otherwise allowed under this section or guidelines of the Commissioner.

The rule further provides that effective March 2, 2014, the Department will remove all third-party assessments approved for use in kindergarten through grade two from the list of approved student assessments for use in APPR plans for the 2014-2015 school year and thereafter. However, an assessment that is not a traditional standardized assessment may be considered an approved student assessment if the superintendent, district superintendent, or chancellor certifies in its APPR plan that the assessment is a not a traditional standardized assessment, as defined in the regulations, and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance. The rule also ensures that any APPR plan that has been approved by the Commissioner for use prior to April 1, 2014 shall remain in effect in accordance with Education Law § 3012-c(2)(1) and those districts and BOCES will be able to continue to use those assessments until a material change is made to their APPR plan to eliminate the use of such assessments.

The rule further provides that if any district or BOCES wishes to make material changes to a plan that solely relate to the elimination of unnecessary assessments that are used on students for APPR purposes, the Department shall expedite the review of such changes and will only review those sections of the plan that relate to the eliminated assessments to ensure compliance with Education Law § 3012-c and Subpart 30-2. To conform to Chapter 56 of the Laws of 2014, the proposed amendment requires that the Commissioner complete his review of such materials within ten business days of submission of properly and completely submitted material changes. The amendment clarifies that to be considered properly and completely submitted, the submission must use the form prescribed by the Commissioner and meet the requirements of Education Law 3012-c and this Subpart, and contain all required information including all appropriate signatures with appropriate dates.

The rule also requires that for any APPR plan submitted to the Commissioner for approval for use in the 2014-2015 school year, the plan must include a signed certification by the superintendent, district superintendent or chancellor that attests that no more than one percent of the minimum required instructional hours of the grade is devoted to traditional standardized assessments and that no more than two percent of the minimum required instructional hours for such grade are spent devoted to test preparation. Time devoted to teacher administered classroom quizzes or exams, portfolio reviews, or performance assessments shall not be counted towards the limits. In addition, formative and diagnostic assessments shall not be counted towards the limits established by this subdivision and nothing in this subdivision shall be construed to supersede the requirements of a section 504 plan of a qualified student with disability or federal law relating to ELL or the IEP of a student with disability.

It further requires that any plan submitted for the 2014-2015 school year and thereafter must include a signed certification, attesting that the amount of time devoted to required State assessments administered by or on behalf of the State for each grade does not exceed, in the aggregate, one percent of the minimum in required annual instructional hours for such grade. Nothing in this subdivision shall be construed to supersede the

requirements of a section 504 plan of a qualified student with disability or federal law relating to ELL or the IEP of a student with disability.

The rule also re-defines core subject areas for the State growth or other comparable measures subcomponent to remove sixth through eighth grade social studies and sixth through seventh science from the definition. This revision will help to provide additional, no-cost options to districts and BOCES who may wish to utilize a school-wide, group, or team measure based on one or more State or Regents assessments in sixth through eighth social studies and/or sixth through seventh science.

6. PAPERWORK:

The rule requires that for any APPR plan submitted to the Commissioner for approval for use in the 2014-2015 school year, the plan must include a signed certification by the superintendent, district superintendent or chancellor that attests that no more than one percent of the minimum required instructional hours for such classroom or program of the grade is devoted to traditional standardized assessments and that no more than two percent of the minimum required instructional hours for such grade are spent devoted to test preparation. Time devoted to teacher administered classroom quizzes or exams, portfolio reviews, or performance assessments shall not be counted towards the limits. In addition, formative and diagnostic assessments shall not be counted towards the limits established by this subdivision and nothing in this subdivision shall be construed to supersede the requirements of a § 504 plan of a qualified student with disability or federal law relating to ELL or the IEP of a student with disability.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on March 26, 2014, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule require that the Compliance Cost section of the previously published Regulatory Flexibility Analysis relating to local governments be revised to read as follows:

COMPLIANCE COSTS:

The proposed amendment makes a series of changes to Subpart 30-2 of the Rules of the Board of Regents, to conform to Chapter 56 of the Laws of 2014 and to support the commitment made by the Board of Regents and the Commissioner to ensure that students are not unnecessarily burdened by over-testing or testing that takes away from the core instructional time in our classrooms and schools. Further, these amendments help to ensure that our youngest students in grades kindergarten through second grade are not subject to traditional standardized testing.

First, the proposed amendment provides that no APPR plan shall be approved by the Commissioner for use in the 2014-2015 school year or thereafter that provides for the administration of traditional standardized assessments to students in kindergarten through grade two that are not being used for diagnostic purposes or are required to be administered by federal law, including but not limited to assessments developed by any vendor, third party or other comparable entity. The proposed amendment does not preclude the use of school- or BOCES-wide, group, or team results using State assessments that are administered to students in higher grades in the school or a district, regional or BOCES-developed student assessment that is developed in collaboration with a vendor, if otherwise allowed under this section or guidelines of the Commissioner.

The proposed amendment further provides that effective March 2, 2014, the Department will remove all third-party assessments approved for use in kindergarten through grade two from the list of approved student assessments for use in APPR plans for the 2014-2015 school year and thereafter. However, an assessment that is not a traditional standardized assessment may be considered an approved student assessment if the superintendent, district superintendent, or chancellor certifies in its APPR plan that the assessment is a not a traditional standardized assessment, as defined in the regulations, and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance. The proposed amendment also ensures that any APPR plan that has been approved by the Commissioner for use prior to April 1, 2014 shall remain in effect in accordance with Education Law § 3012-c(2)(1) and those districts and BOCES will be able to continue to use those assessments until a material change is made to their APPR plan to eliminate the use of such assessments.

The proposed amendment further provides that if any district or BOCES wishes to make material changes to a plan that solely relate to the elimination of unnecessary assessments that are used on students for APPR purposes, the Department shall expedite the review of such changes and will only review those sections of the plan that relate to the eliminated assessments to ensure compliance with Education Law § 3012-c and Subpart 30-2. To conform to Chapter 56 of the Laws of 2014, the proposed amendment requires that the Commissioner complete his review of such materials within ten business days of submission of properly and completely submitted material changes. The amendment clarifies that to be considered

properly and completely submitted, the submission must use the form prescribed by the Commissioner and meet the requirements of Education Law 3012-c and this Subpart, and contain all required information including all appropriate signatures with appropriate dates.

The proposed amendment also requires that for any APPR plan submitted to the Commissioner for approval for use in the 2014-2015 school year, the plan must include a signed certification by the superintendent, district superintendent or chancellor that attests that no more than one percent of the minimum required instructional hours for such classroom or program of the grade is devoted to traditional standardized assessments and that no more than two percent of the minimum required instructional hours for such grade are spent devoted to test preparation. Time devoted to teacher administered classroom quizzes or exams, portfolio reviews, or performance assessments shall not be counted towards the limits. In addition, formative and diagnostic assessments shall not be counted towards the limits established by this subdivision and nothing in this subdivision shall be construed to supersede the requirements of a section 504 plan of a qualified student with disability or federal law relating to English language learners or the individualized education program of a student with disability.

It further requires that any plan submitted for the 2014-2015 school year and thereafter must include a signed certification, attesting that the amount of time devoted to required State assessments administered by or on behalf of the State for each grade does not exceed, in the aggregate, one percent of the minimum in required annual instructional hours for such grade. Nothing in this subdivision shall be construed to supersede the requirements of a section 504 plan of a qualified student with disability or federal law relating to English language learners or the individualized education program of a student with disability.

The proposed amendment also re-defines core subject areas for the State growth or other comparable measures subcomponent to remove sixth through eighth grade social studies and sixth through seventh science from the definition. This revision will help to provide additional, no-cost options to districts and BOCES who may wish to utilize a school-wide, group, or team measure based on one or more State or Regents assessments in sixth through eighth social studies and/or sixth through seventh science.

The proposed amendment requires that for any APPR plan submitted to the Commissioner for approval for use in the 2014-2015 school year, the plan must include a signed certification by the superintendent, district superintendent or chancellor that attests that no more than one percent of the minimum required instructional hours for such classroom or program of the grade is devoted to traditional standardized assessments and that no more than two percent of the minimum required instructional hours for such grade are spent devoted to test preparation. Time devoted to teacher administered classroom quizzes or exams, portfolio reviews, or performance assessments shall not be counted towards the limits. In addition, formative and diagnostic assessments shall not be counted towards the limits established by this subdivision and nothing in this subdivision shall be construed to supersede the requirements of a section 504 plan of a qualified student with disability or federal law relating to English language learners or the individualized education program of a student with disability.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on March 26, 2014, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The above revisions to the proposed rule require that the Reporting, Recordkeeping, and Other Compliance Requirements; and Professional Services Section of the previously published Rural Area Flexibility Analysis be revised to read as follows:

2. REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment makes a series of changes to Subpart 30-2 of the Rules of the Board of Regents, to conform to Chapter 56 of the Laws of 2014 and to support the commitment made by the Board of Regents and the Commissioner to ensure that students are not unnecessarily burdened by over-testing or testing that takes away from the core instructional time in our classrooms and schools. Further, these amendments help to ensure that our youngest students in grades kindergarten through second grade are not subject to traditional standardized testing.

First, the proposed amendment provides that no APPR plan shall be approved by the Commissioner for use in the 2014-2015 school year or thereafter that provides for the administration of traditional standardized assessments to students in kindergarten through grade two that are not being used for diagnostic purposes or are required to be administered by federal law, including but not limited to assessments developed by any vendor, third party or other comparable entity. The proposed amendment does not preclude the use of school- or BOCES-wide, group, or team results using

State assessments that are administered to students in higher grades in the school or a district, regional or BOCES-developed student assessment that is developed in collaboration with a vendor, if otherwise allowed under this section or guidelines of the Commissioner.

The proposed amendment further provides that effective March 2, 2014, the Department will remove all third-party assessments approved for use in kindergarten through grade two from the list of approved student assessments for use in APPR plans for the 2014-2015 school year and thereafter. However, an assessment that is not a traditional standardized assessment may be considered an approved student assessment if the superintendent, district superintendent, or chancellor certifies in its APPR plan that the assessment is not a traditional standardized assessment, as defined in the regulations, and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance. The proposed amendment also ensures that any APPR plan that has been approved by the Commissioner for use prior to April 1, 2014 shall remain in effect in accordance with Education Law § 3012-c(2)(1) and those districts and BOCES will be able to continue to use those assessments until a material change is made to their APPR plan to eliminate the use of such assessments.

The proposed amendment further provides that if any district or BOCES wishes to make material changes to a plan that solely relate to the elimination of unnecessary assessments that are used on students for APPR purposes, the Department shall expedite the review of such changes and will only review those sections of the plan that relate to the eliminated assessments to ensure compliance with Education Law § 3012-c and Subpart 30-2. To conform to Chapter 56 of the Laws of 2014, the proposed amendment requires that the Commissioner complete his review of such materials within ten business days of submission of properly and completely submitted material changes. The amendment clarifies that to be considered properly and completely submitted, the submission must use the form prescribed by the Commissioner and meet the requirements of Education Law 3012-c and this Subpart, and contain all required information including all appropriate signatures with appropriate dates.

The proposed amendment also requires that for any APPR plan submitted to the Commissioner for approval for use in the 2014-2015 school year, the plan must include a signed certification by the superintendent, district superintendent or chancellor that attests that no more than one percent of the minimum required instructional hours for such classroom or program of the grade is devoted to traditional standardized assessments and that no more than two percent of the minimum required instructional hours for such grade are spent devoted to test preparation. Time devoted to teacher administered classroom quizzes or exams, portfolio reviews, or performance assessments shall not be counted towards the limits. In addition, formative and diagnostic assessments shall not be counted towards the limits established by this subdivision and nothing in this subdivision shall be construed to supersede the requirements of a section 504 plan of a qualified student with disability or federal law relating to English language learners or the individualized education program of a student with disability.

It further requires that any plan submitted for the 2014-2015 school year and thereafter must include a signed certification, attesting that the amount of time devoted to required State assessments administered by or on behalf of the State for each grade does not exceed, in the aggregate, one percent of the minimum in required annual instructional hours for such grade. Nothing in this subdivision shall be construed to supersede the requirements of a section 504 plan of a qualified student with disability or federal law relating to English language learners or the individualized education program of a student with disability.

The proposed amendment also re-defines core subject areas for the State growth or other comparable measures subcomponent to remove sixth through eighth grade social studies and sixth through seventh science from the definition. This revision will help to provide additional, no-cost options to districts and BOCES who may wish to utilize a school-wide, group, or team measure based on one or more State or Regents assessments in sixth through eighth social studies and/or sixth through seventh science.

The proposed amendment requires that for any APPR plan submitted to the Commissioner for approval for use in the 2014-2015 school year, the plan must include a signed certification by the superintendent, district superintendent or chancellor that attests that no more than one percent of the minimum required instructional hours for such classroom or program of the grade is devoted to traditional standardized assessments and that no more than two percent of the minimum required instructional hours for such grade are spent devoted to test preparation. Time devoted to teacher administered classroom quizzes or exams, portfolio reviews, or performance assessments shall not be counted towards the limits. In addition, formative and diagnostic assessments shall not be counted towards the limits established by this subdivision and nothing in this subdivision shall be construed to supersede the requirements of a section 504 plan of a

qualified student with disability or federal law relating to English language learners or the individualized education program of a student with disability.

Revised Job Impact Statement

Since publication of the Notice of Emergency Adoption and Revised Rule Making in the State Register on March 26, 2014, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The proposed rule, as so revised, implements Chapter 56 of the Laws of 2014, by defining traditional standardized assessments, conforming the expedited review process for material changes to eliminate unnecessary tests to the new law, and establishes caps on testing time for State tests (1%) and other standardized tests (1%), and for test preparation time under standardized conditions (2%) based on the minimum required annual instructional hours for such grade. The revised rule will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact on jobs or employment opportunities, no further measures were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on March 26, 2014, the State Education Department received the following comments.

1. COMMENT: Approximately 85 districts in our area used AIMSweb, NWEA, iReady, STAR Math, STAR Reading and/or STAR Early Literacy as a diagnostic tool prior to NYSED approving them as an approved assessment for APPR purposes. Districts were extremely happy when these assessments were approved as student assessments for use by school districts and BOCES in teacher and principal evaluations because, not only could they be used for diagnostic and instructional purposes, it could be used to satisfy the testing requirements of APPR. Please consider keeping these assessments on the approved list because of their diagnostic and instructional uses for grades K-2. If eliminated, districts would be forced to create another assessment or measure possibly causing MORE testing of the K-2 students rather than less as was the intent of the change in regulations.

RESPONSE: Effective March 2, 2014, all third-party assessments used in grades K-2 have been removed from the actual "approved assessment" list and pursuant to Chapter 56 of the Laws of 2014, school districts are prohibited from using traditional standardized assessments in these grades. However, Chapter 56 of the Laws of 2014 and the proposed amendment clarify that any school district or BOCES with an annual professional performance review plan approved or determined by the Commissioner on or before March 31, 2014 that provides for the use of an approved student assessment for students in kindergarten through grade two remains in effect in accordance with Education Law § 3012-c(1)(2) and the district or BOCES may continue to use such assessments until a material change is made and approved by the Commissioner to eliminate such use.

The revised proposed amendment defines a traditional standardized assessment as a systematic method of gathering information from objectively scored items that allow the test taker to select one or more of the given options or choices as their response. Examples include multiple-choice, true-false, and matching items. Traditional standardized assessments are those that require the student (and not the examiner/assessor) to directly use a "bubble" answer sheet. Traditional standardized assessments do not include performance assessments or assessments in which students perform real-world tasks that demonstrate application of knowledge and skills; assessments that are otherwise required to be administered by federal law; and/or assessments used for diagnostic or formative purposes. Therefore, if these assessments are used for diagnostic purposes and the superintendent, district superintendent, or chancellor of a school district/BOCES that chooses to use such assessment certifies in its APPR plan that the assessment is a not a traditional standardized assessment and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance, these assessments may be used in grades K-2 for APPR purposes.

2. COMMENT: The provision that no APPR plan for the 2014-15 school year will be approved if it includes "traditional standardized third party or vendor assessments to students in kindergarten through grade two." Not knowing what your definition of "traditional third party, standardized assessments will be" I have a few concerns.

First, our district chose to use AIMSweb Reading & Math for our Growth sub-component for K-2 teachers in our APPR plan. We made this decision so that we would be able to use an assessment that was already in place for our students. Simply said, we wouldn't be adding or creating a new assessment on top of what we already use for RTI/DIagnostic/Formative purposes.

Secondly, it would seem that the exclusion of RTI/DIagnostic/Formative

assessments such as AIMSweb, which are used to meet the state mandate of implementing an RTI approach to identifying students with learning disabilities, would have the opposite effect of reducing testing for K-2 students. For example, since we have a K-2 building we would need to create a new (and likely longer, less reliable) assessment to use for our K-2 teacher's growth sub-component. This would add to the time we utilize for assessments and end up adding an assessment that is primarily used for APPR purposes.

RESPONSE: See response to Comment #1.

3. COMMENT: Our district uses two of the approved K-2 assessment products: Aimsweb and STAR (Renaissance Learning) as diagnostic and instructional tools while also using the assessment to meet APPR requirements. The possibility of removing these options for our districts will actually INCREASE the amount of testing necessary for K-2 students instead of decreasing it as the adjustment to the regulation intends. Please consider this carefully before a decision is finalized.

RESPONSE: See response to Comment #1.

4. COMMENT: Our district has, for many years, used AIMSweb as a diagnostic test for students K-8. We were certainly pleased when SED approved AIMSweb for use with APPRs, as we were able to limit testing of students for APPR purposes by using this test both for diagnostic and for APPR purposes. The recommendations to the BOR will force disapproval of the use of these tests for the APPR. Consequently, our district will be forced to either use a group/building metric for the APPR or find another test which can be used. In the case of the latter, we will indeed be ADDING tests for the K-2 students as we will no longer be able to use AIMSweb for both purposes. Again, AIMSweb has been used in this district for years as a diagnostic. As well, the time spent on this assessment is well under the 1% cap. It is working and we are concerned about a change simply for the sake of change, or a change that is responsive to political pressures rather than a consideration of what is actually happening in schools.

While a group metric is another option, as a district, we have chosen to avoid that route, particularly as the results of the 3rd grade ELA and Math assessments would be used for the group metric. We believe that a teacher's score for their APPR should as closely as possible reflect the current work they are doing with their current classes. Certainly, the work that a K-2 teacher does will eventually contribute to a student's score in 3rd grade, but issues of cohorts and student population within any given year may not accurately represent the work that they are currently doing.

So, we are asking for clarification. If we are using AIMSweb for diagnostic purposes, in the interest of avoiding double testing, can the results of that test be used for APPR purposes? If the answer currently is no, we respectfully ask you to reconsider this decision which will not only negatively impact districts but, most importantly, will negatively impact children.

RESPONSE: See response to Comment #1.

5. COMMENT: Although I, too, support eliminating K-2 standardized assessments for APPR purposes, I propose that districts have the ability to continue using AIMSweb (included on the State approved list) for APPR purposes. First, AIMSweb houses data for short (1 - 8 minutes) reading, writing, and math probes (assessments). These probes are better described as formative/interim assessments typically used for Response to Interventions (RTI) decision-making. What is more, the early literacy probes such as letter naming measures and letter sound measures are performance tasks. In essence, AIMSweb probes are similar in nature to the Dynamic Indicators of Basic Early Literacy Skills (DIBELS).

I bring this to your attention because we have been using AIMSweb probes two ways in grades K-5. First way, as universal screenings for RTI and second, to meet APPR guidelines for our K-5 student population. I'm thinking that districts who have double-dipped would appreciate having the ability to make a local decision regarding AIMSweb use for K-2 APPR purposes.

RESPONSE: See response to Comment #1.

NOTICE OF ADOPTION

Protection of People with Special Needs Act (L. 2012, Ch. 501)

I.D. No. EDU-28-13-00009-A

Filing No. 334

Filing Date: 2014-04-29

Effective Date: 2014-05-14

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

Action taken: Amendment of sections 200.7, 200.15 and 200.22 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207

(not subdivided), 4002(1)-(3), 4212(a), 4314(a), 4358(a), 4403(11), 4308(3), 4355(3), 4401(2), 4402(1)-(7), 4403(3), (11) and (13), 4410(1)-(13); and L. 2012, ch. 501

Subject: Protection of People with Special Needs Act (L. 2012, ch. 501).

Purpose: To conform Commissioner's Regulations relating to students attending residential schools to L. 2012, ch. 501.

Text or summary was published in the July 10, 2013 issue of the Register, I.D. No. EDU-28-13-00009-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.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 2018, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Mandatory Reporting Requirements and Testing Misconduct

I.D. No. EDU-45-13-00033-A

Filing No. 335

Filing Date: 2014-04-29

Effective Date: 2014-05-14

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

Action taken: Amendment of section 102.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 225(1)-(11), 305(1) and (2); and Civil Service Law, section 75-b(2)(a)

Subject: Mandatory reporting requirements and testing misconduct.

Purpose: The purpose of the proposed amendment is to formally implement the recommendations of Special Investigator Hank Greenberg to enhance the security of the State assessment program by prohibiting certain testing misconduct, establishing a mandatory reporting requirement for certain school personnel who learn of any security breach or other testing misconduct, and to sanction those who fail to comply.

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. EDU-45-13-00033-P.

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

Revised rule making(s) were previously published in the State Register on February 12, 2014.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on November 6, 2013, the following substantial revisions were made to the proposed rule:

The proposed rule has been revised as follows:

Subdivision (b) of section 102.4 has been revised to require charter school employees in a position for which a teaching or school leader certificate is required to report testing misconduct or face potential Part 83 moral character charges. It also requires that each charter school employee in a position for which a certificate is not required to be subject to disciplinary action by the charter school in accordance with Education Law § 225(11).

Paragraph (2) of subdivision (c) of section 102.4 shall be revised to clarify that testing misconduct shall only apply to duplicating, reproducing, or keeping any part of any secure examination materials if no prior written authorization is obtained by the Department.

Paragraph (10) of subdivision (c) of section 102.4 is revised to exclude from the definition of testing misconduct legitimate rescoring activities authorized by the superintendent of a public school district or chief administrative officer of a nonpublic or charter school or by the Department.

Subdivision (d) of section 102.4 is revised to require charter school employees to report known testing misconduct.

The above changes require that the Needs and Benefits, Federal Standards, and Compliance sections of the previously published Regulatory Impact Statement be revised to read as follows:

3. NEEDS AND BENEFITS:

In November 2011, pursuant to Education Law § 104 and section 3.9 of the Rules of the Board of Regents, the Commissioner appointed Henry "Hank" Greenberg as a Special Investigator, and tasked him with performing a review of the Department's processes and procedures for handling and responding to reports of allegations of misconduct related to the administration and scoring of New York State assessments. In this capacity, Special Investigator Greenberg performed an exhaustive review of the Department's processes and procedures for the intake, review, referral, investigation, findings, response, follow-up, and records retention policy regarding allegations of educator misconduct during the administration and scoring of State assessments. The review included interviews of Department personnel and others involved in testing investigations, and the review of pending and closed investigative case files, guidance materials, manuals, statutes, and regulations, among other relevant items.

On March 19, 2012, Special Investigator Greenberg reported his findings and recommendations to the Board. See Greenberg, H., Review of the New York State Education Department's ('NYSED') Processes and Procedures for Handling and Responding to Reports of Alleged Irregularities in the Administration and Scoring of State Assessments. The Board accepted all of the Special Investigator's recommendations, which included the creation of a new Test Security Unit ("TSU") that would focus on the detection and deterrence of security breaches and other testing irregularities.

Another significant recommendation from Special Investigator Greenberg that the Board adopted was that the Department establish a mandatory reporting requirement for school personnel, who learn of any security breach or other testing misconduct, define specific context based examples of prohibited testing misconduct, and sanction those who fail to comply. (Greenberg Report, pgs. 10 and 14, emphasis in original). Pursuant to this recommendation, the TSU incorporated a mandatory reporting requirement in the Department's testing manuals for Regents and Grades 3 through 8 examinations. The TSU recommends that the Board formalize Special Investigator Greenberg's recommendations by amending Section 102.4 of the Commissioner's Regulations to prohibit certain testing misconduct and that the regulation be amended to include specific concrete examples of what constitutes "testing misconduct."

Additionally, Special Investigator Greenberg recommended that NYSED "[p]rotect from retribution persons who report security breaches and other testing irregularities." (Greenberg Report, p. 11). Therefore, the TSU recommends that the Board formalize this recommendation for protecting persons who report test security violations to the TSU by amending Section 102.4 of the Commissioner's Regulations to include such protection. Under Civil Service Law § 75-b, protections exist for public employees who report violations of "a law, rule, or regulation" that the reporting person reasonably believes has occurred. The proposed amendment clarifies that certified individuals who take retaliatory action against a person who makes a test fraud report in compliance with the proposed amendment may be subject to Part 83 sanctions.

The proposed amendments enhance the security of the State Assessment program in several ways. First, the regulation defines specific types of testing misconduct, prohibits such misconduct and requires that incidents of suspected testing misconduct be reported to the Department so that they can be investigated and addressed. Second, the proposed amendment serves to protect district personnel, educators and other employees in school districts and BOCES who file reports of suspected cheating from retaliation by prohibiting them from being disciplined and/or from any other adverse action as the result of the filing of a report while at the same time deterring misconduct and encouraging a culture of ethical testing by serving notice that any ethical testing breaches will be reported to the Department if they become known. The mandatory reporting requirements in the proposed amendment are consistent with the requirements of several other states, including but not limited to, Virginia, Illinois, Texas and Nevada.

9. FEDERAL STANDARDS:

There are no Federal standards that require school personnel to report testing misconduct in this State.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted at the April Regents meeting and will become effective on May 14, 2014.

Revised Regulatory Flexibility Analysis

The above revisions to the proposed rule require that the Effect of Rule, Compliance Requirements, Professional Services, Compliance Costs and Economic and Technological Feasibility sections of the Local Government section of the previously published Regulatory Flexibility Analysis be revised to read as follows:

1. EFFECT OF RULE:

The rule applies to all school personnel in public school districts, boards of cooperative educational services (“BOCES”) and charter schools in the State.

2. COMPLIANCE REQUIREMENTS:

In November 2011, pursuant to Education Law § 104 and section 3.9 of the Rules of the Board of Regents, the Commissioner appointed Henry “Hank” Greenberg as a Special Investigator, and tasked him with performing a review of the Department’s processes and procedures for handling and responding to reports of allegations of misconduct related to the administration and scoring of New York State assessments. In this capacity, Special Investigator Greenberg performed an exhaustive review of the Department’s processes and procedures for the intake, review, referral, investigation, findings, response, follow-up, and records retention policy regarding allegations of educator misconduct during the administration and scoring of State assessments. The review included interviews of Department personnel and others involved in testing investigations, and the review of pending and closed investigative case files, guidance materials, manuals, statutes, and regulations, among other relevant items.

On March 19, 2012, Special Investigator Greenberg reported his findings and recommendations to the Board. See Greenberg, H., Review of the New York State Education Department’s (“NYSED”) Processes and Procedures for Handling and Responding to Reports of Alleged Irregularities in the Administration and Scoring of State Assessments. The Board accepted all of the Special Investigator’s recommendations, which included the creation of a new Test Security Unit (“TSU”) that would focus on the detection and deterrence of security breaches and other testing irregularities.

Another significant recommendation from Special Investigator Greenberg that the Board adopted was that the Department establish a mandatory reporting requirement for school personnel, who learn of any security breach or other testing misconduct, define specific context based examples of prohibited testing misconduct, and sanction those who fail to comply. (Greenberg Report, pgs. 10 and 14, emphasis in original). Pursuant to this recommendation, the TSU incorporated a mandatory reporting requirement in the Department’s testing manuals for Regents and Grades 3 through 8 examinations. The TSU recommends that the Board formalize Special Investigator Greenberg’s recommendations by amending Section 102.4 of the Commissioner’s Regulations to prohibit certain testing misconduct and that the regulation be amended to include specific concrete examples of what constitutes “testing misconduct.”

Additionally, Special Investigator Greenberg recommended that NYSED “[p]rotect from retribution persons who report security breaches and other testing irregularities.” (Greenberg Report, p. 11). Therefore, the TSU recommends that the Board formalize this recommendation for protecting persons who report test security violations to the TSU by amending Section 102.4 of the Commissioner’s Regulations to include such protection. Under Civil Service Law § 75-b, protections exist for public employees who report violations of “a law, rule, or regulation” that the reporting person reasonably believes has occurred. The proposed amendment clarifies that certified individuals who take retaliatory action against a person who makes a test fraud report in compliance with the proposed amendment may be subject to Part 83 sanctions.

The proposed amendments enhance the security of the State Assessment program in several ways. First, the regulation defines specific types of testing misconduct, prohibits such misconduct and requires that incidents of suspected testing misconduct be reported to the Department so that they can be investigated and addressed. Second, the proposed amendment serves to protect district personnel, educators and others who file reports of suspected cheating from retaliation in school districts and BOCES by prohibiting them from being disciplined and/or from any other adverse action as the result of the filing of a report while at the same time deterring misconduct and encouraging a culture of ethical testing by serving notice that any ethical testing breaches will be reported to the Department if they become known. The mandatory reporting requirements in the proposed amendment are consistent with the requirements of several other states, including but not limited to, Virginia, Illinois, Texas and Nevada.

3. PROFESSIONAL SERVICES:

The proposed rule does not impose any additional professional services requirements on school districts, BOCES or charter schools.

4. COMPLIANCE COSTS:

The purpose of the proposed amendment is to formally implement the recommendations of Special Investigator Hank Greenberg to enhance the security of the State assessment program by prohibiting certain testing misconduct, establishing a mandatory reporting requirement for school personnel, who learn of any security breach or other testing misconduct, and to sanction those who fail to comply. The proposed amendment does not impose any additional costs on school districts, BOCES and charter schools beyond those currently imposed.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional costs or technological require-

ments on school districts, BOCES or charter schools beyond those already imposed.

Revised Rural Area Flexibility Analysis

The above revisions to the proposed rule require that the Reporting, Recordkeeping, and Other Compliance Requirements; and Professional Services sections the previously published Rural Area Flexibility Analysis be revised to read as follows:

2. REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

In November 2011, pursuant to Education Law § 104 and section 3.9 of the Rules of the Board of Regents, the Commissioner appointed Henry “Hank” Greenberg as a Special Investigator, and tasked him with performing a review of the Department’s processes and procedures for handling and responding to reports of allegations of misconduct related to the administration and scoring of New York State assessments. In this capacity, Special Investigator Greenberg performed an exhaustive review of the Department’s processes and procedures for the intake, review, referral, investigation, findings, response, follow-up, and records retention policy regarding allegations of educator misconduct during the administration and scoring of State assessments. The review included interviews of Department personnel and others involved in testing investigations, and the review of pending and closed investigative case files, guidance materials, manuals, statutes, and regulations, among other relevant items.

On March 19, 2012, Special Investigator Greenberg reported his findings and recommendations to the Board. See Greenberg, H., Review of the New York State Education Department’s (“NYSED”) Processes and Procedures for Handling and Responding to Reports of Alleged Irregularities in the Administration and Scoring of State Assessments. The Board accepted all of the Special Investigator’s recommendations, which included the creation of a new Test Security Unit (“TSU”) that would focus on the detection and deterrence of security breaches and other testing irregularities.

Another significant recommendation from Special Investigator Greenberg that the Board adopted was that the Department establish a mandatory reporting requirement for school personnel, who learn of any security breach or other testing misconduct, define specific context based examples of prohibited testing misconduct, and sanction those who fail to comply. (Greenberg Report, pgs. 10 and 14, emphasis in original). Pursuant to this recommendation, the TSU incorporated a mandatory reporting requirement in the Department’s testing manuals for Regents and Grades 3 through 8 examinations. The TSU recommends that the Board formalize Special Investigator Greenberg’s recommendations by amending Section 102.4 of the Commissioner’s Regulations to prohibit certain testing misconduct and that the regulation be amended to include specific concrete examples of what constitutes “testing misconduct.”

Additionally, Special Investigator Greenberg recommended that NYSED “[p]rotect from retribution persons who report security breaches and other testing irregularities.” (Greenberg Report, p. 11). Therefore, the TSU recommends that the Board formalize this recommendation for protecting persons who report test security violations to the TSU by amending Section 102.4 of the Commissioner’s Regulations to include such protection. Under Civil Service Law § 75-b, protections exist for public employees who report violations of “a law, rule, or regulation” that the reporting person reasonably believes has occurred. The proposed amendment clarifies that certified individuals who take retaliatory action against a person who makes a test fraud report in compliance with the proposed amendment may be subject to Part 83 sanctions.

The proposed amendments enhance the security of the State Assessment program in several ways. First, the regulation defines specific types of testing misconduct, prohibits such misconduct and requires that incidents of suspected testing misconduct be reported to the Department so that they can be investigated and addressed. Second, the proposed amendment serves to protect district personnel, educators and others in school districts and boards of cooperative educational services who file reports of suspected cheating from retaliation by prohibiting them from being disciplined and/or from any other adverse action as the result of the filing of a report while at the same time deterring misconduct and encouraging a culture of ethical testing by serving notice that any ethical testing breaches will be reported to the Department if they become known. The mandatory reporting requirements in the proposed amendment are consistent with the requirements of several other states, including but not limited to, Virginia, Illinois, Texas and Nevada.

Revised Job Impact Statement

Since publication of a Notice of Revised Rule Making in the State Register on November 6, 2013, the proposed rule has been revised as set forth in the Revised Regulatory Impact Statement published herewith. The purpose of the proposed amendment, as revised, is to formally implement the recommendations of Special Investigator Hank Greenberg to enhance the security of the State assessment program. Specifically, the proposed

amendment prohibits certain testing misconduct and establishes a mandatory reporting requirement for school personnel who learn of any security breach or other testing misconduct, and to sanction those who fail to comply. Because it is evident from the nature of the proposed revised rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2017, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Since publication of a Notice of Revised Rule Making in the State Register on February 12, 2014, the State Education Department received the following comments:

1. COMMENT:

One commenter asked what the Department's intent was regarding the applicability of the rules to teachers, administrators and other staff of charter schools who are involved in the administration and scoring of student assessments. Does the Department intend the prohibition of testing misconduct to apply to these individuals? How are charter school staff meant to be covered by the mandatory misconduct reporting requirement? If subject to the reporting mandate, how are staff intended to be protected from retaliatory actions?

DEPARTMENT RESPONSE:

In order to protect the integrity of the State assessments and to eliminate any testing and/or security breaches on such assessments, the Department has revised the proposed amendment to require employees of charter schools to be covered by the reporting requirement and to make the prohibition of testing misconduct apply to charter school employees. While Civil Service Law 75-b does not apply to charter schools, we would encourage charter schools to not take any retaliatory actions against an employee for reporting under this section of the regulations.

2. COMMENT:

The proposed amendment would impose requirements on school employees that are inconsistent with existing school governance and reporting structures. Specifically, the Proposed Rule would require employees to report suspected incidents of academic dishonesty directly to the SED Executive Director of the Test Security and Educator Integrity Unit ("SED Director"). This reporting requirement, however, conflicts with demonstrated methods of effective school governance, and would unnecessarily delay the prompt resolution of any suspected cases of testing misconduct.

The Rule should be amended so that school employees are required to report to school leadership (i.e., the principal) any suspected incidents of academic dishonesty. School leadership would then conduct an investigation, make a determination based on the facts, and report substantiated incidents to the SED Director. School employees should only be required to bypass the procedure described above when:

1. Principals are implicated in the suspected misconduct; and/or

2. School leadership declines to report the incident to the SED Director after conducting an investigation, where the employee continues to believe that a reportable incident took place.

Bypassing school-level reporting structures undermines good school governance and inhibits effective school management, which requires that school leadership serve as the first point of contact for school-level allegations. Additionally, the Rule as currently written would impose an unnecessary delay to the start of the investigation. School leadership, on the other hand, is positioned to investigate and resolve or address such incidents immediately as they are raised.

DEPARTMENT RESPONSE:

A significant recommendation from Special Investigator Greenberg that the Board adopted was that the Department establish a mandatory reporting requirement for school personnel, who learn of any security breach or other testing misconduct, define specific context based examples of prohibited testing misconduct, and sanction those who fail to comply. (Greenberg Report, pgs. 10 and 14, emphasis in original). Pursuant to this recommendation, the Department's Test Security Unit incorporated a mandatory reporting requirement in the Department's testing manuals for Regents and Grades 3 through 8 examinations. The proposed amendment merely formalizes Special Investigator Greenberg's recommendations by amending Section 102.4 of the Commissioner's Regulations to prohibit certain testing misconduct and provides specific concrete examples of what constitutes "testing misconduct."

There is nothing in the proposed amendment that prohibits a school district, BOCES or charter school from conducting its own internal investigation of any testing misconduct for purposes of discipline and/or enhancing its own testing procedures. However, the Department also has a significant interest in protecting the integrity of the State assessments. The

proposed amendment merely formalizes a current requirement that school districts and BOCES report testing misconduct to the Department's Test Security Unit and requires charter school employees to do the same.

3. COMMENT: We write to comment on the Revised Rule Making issued by the State Education Department ("SED") relating to Mandatory Reporting Requirements and Testing Misconduct, I.D. No. EDU-45-13-00033-RP, which was published in the February 12, 2014, New York State Register (the "Revised Proposed Rule"). We wish to reiterate that we fully support New York State's commitment to ensuring the security of the State Assessment program. We uncompromisingly believe that schools must be free of cheating and any other form of academic dishonesty.

However, we object to the requirement on charters schools to the extent that are inconsistent with Education Law. Specifically, Education Law § 2854 expressly states that public charter schools are exempt from all state regulations "governing public or private schools, boards of education and school districts, including those relating to school personnel. . . ." N.Y. Educ. Law § 2854(1)(b) (emphasis supplied).

The Revised Proposed Rule would impose requirements on charter schools with regard to their school personnel. Such requirements conflict with the Education Law and are therefore impermissible under the law. See *Trump-Equitable Fifth Ave. Co. v. Gliedman*, 57 N.Y.2d 588, 595, 457 N.Y.S.2d 466, 469 (1982) ("It is well established that in exercising its rule-making authority an administrative agency cannot extend the meaning of the statutory language to apply to situations not intended to be embraced within the statute. Nor may an agency promulgate a rule out of harmony with or inconsistent with the plain meaning of the statutory language.") (internal citations omitted).

First, the sub-section explains that "[t]esting misconduct, assisting in the engagement of, or soliciting another to engage in testing misconduct and/or the knowing failure to report testing misconduct" when committed by a charter school employee "in a position for which a teaching or school leader certificate is required, shall be deemed to raise a reasonable question of moral character under Part 83 of this Title and shall be subject to referral to the Office of School Personnel Review and Accountability at the [SED] to the extent provided in Section 83.1 of this Title." Proposed Rule 8 NYCRR § 102.4(b) (emphasis added). Section 83.1(a) requires that the "chief school administrator" make the referral to SED. 8 NYCRR § 83.1(a). The language in the revised sub-section, therefore, appears to require the charter school to refer its own personnel for discipline to SED. Such a policy clearly relates to the charter school's relationship with its school personnel, an area in which charter schools are explicitly exempt from state regulations and are outside SED's jurisdiction. As such, the Proposed Rule is "out of harmony with" and "inconsistent with the plain meaning of" Education Law § 2854, and is therefore invalid. See *Trump-Equitable Fifth Ave. Co.*, 57 N.Y.2d at 595, 457 N.Y.S.2d at 469.

Second, the revised sub-section requires that "charter school employee[s] in a position for which a teaching or school leader certificate is not required who commit[] an unlawful act in respect to examination and records. . . shall be subject to disciplinary action by the. . . charter school in accordance with subdivision 11 of Education Law § 225."¹¹ (emphasis added). While charter schools are committed to ensuring that their employees do not commit unlawful acts, including those in respect to examination and records, SED lacks jurisdiction to impose such obligations on charter schools vis-a-vis their own employees. As above, this revised sub-section contradicts the express language in Education Law § 2854 and is therefore impermissible under the law. See *Trump-Equitable Fifth Ave. Co.*, 57 N.Y.2d at 595, 457 N.Y.S.2d at 469.

The Revised Proposed Rule should be amended so that charter schools are not subject to state regulations "relating to school personnel," in accordance with Education Law § 2854.

DEPARTMENT RESPONSE: Education Law § 2854 provides that a charter school shall meet the same health and safety, civil rights and student assessment requirements applicable to other public schools. A significant recommendation from Special Investigator Greenberg on the security of the State's student assessments that the Board of Regents adopted was that the Department establish a mandatory reporting requirement for school personnel, who learn of any security breach or other testing misconduct, define specific context based examples of prohibited testing misconduct, and sanction those who fail to comply. (Greenberg Report, pgs. 10 and 14, emphasis in original). Pursuant to this recommendation, the Department's Test Security Unit incorporated a mandatory reporting requirement in the Department's testing manuals for Regents and Grades 3 through 8 examinations, as a critical student assessment requirement needed to protect the integrity of the testing process applicable to all schools that administer the State assessments. The proposed amendment merely formalizes Special Investigator Greenberg's recommendations by amending Section 102.4 of the Commissioner's Regulations to prohibit certain testing misconduct and provides specific concrete examples of what constitutes "testing misconduct."

There is nothing in the proposed amendment that prohibits a charter

school from conducting its own internal investigation of any testing misconduct for purposes of discipline and/or enhancing its own testing procedures. However, the Department also has a significant interest in protecting the integrity of the State assessments. Education Law § 225 specifically addresses unlawful acts relating to student assessments and charter schools are subject to the same student assessment requirements as public schools (Education Law § 2854[1][b]) and in order to protect the State assessment program, all school personnel must be subject to disciplinary action for unlawful acts relating to improper conduct on student assessments. No specific disciplinary measures or procedures are prescribed in the regulation—all that is required is that schools make testing misconduct, which is criminal conduct constituting a misdemeanor under Education Law § 225(10), grounds for disciplinary action.

NOTICE OF ADOPTION

Elementary and Secondary Education Act (ESEA) Flexibility and School and School District Accountability

I.D. No. EDU-04-14-00004-A

Filing No. 337

Filing Date: 2014-04-29

Effective Date: 2014-05-14

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

Action taken: Amendment of sections 100.4 and 100.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 210 (not subdivided), 215 (not subdivided), 305(1), (2) and (20), 308 (not subdivided), 309 (not subdivided), 3204(3) and 3713(1) and (2)

Subject: Elementary and Secondary Education Act (ESEA) Flexibility and school and school district accountability.

Purpose: To provide flexibility to LEAs in the administration of Regents mathematics examinations (Common Core) to students in grades 7-8.

Text or summary was published in the January 29, 2014 issue of the Register, I.D. No. EDU-04-14-00004-EP.

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

Revised rule making(s) were previously published in the State Register on February 26, 2014.

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.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 the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Continuing Education Requirements for Licensed Master Social Workers and Licensed Clinical Social Workers

I.D. No. EDU-07-14-00002-A

Filing No. 333

Filing Date: 2014-04-29

Effective Date: 2014-05-14

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

Action taken: Addition of section 74.10 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 212(3), 6504 (not subdivided), 6507(2)(a), 7710(1), (2) and (3); and L. 2013, ch. 443

Subject: Continuing education requirements for Licensed Master Social Workers and Licensed Clinical Social Workers.

Purpose: The purpose of the rule is to conform the Regulations of the Commissioner of Education to Chapter 443 of the Laws of 2013 that added Section 7710 of the Education Law which requires licensed master social workers and licensed clinical social workers to complete 36 hours of mandatory continuing education when registering to practice in New York State, effective January 1, 2015. The rule also establishes standards for the Department's approval of continuing education providers, defines acceptable continuing education subjects and educational activities, establishes requirements when there is a lapse in practice, institutes requirements for licensees under conditional registration, and sets fees for licensees and providers.

Text or summary was published in the February 19, 2014 issue of the Register, I.D. No. EDU-07-14-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.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 the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS. An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the February 19, 2014 State Register, the State Education Department received the following comments:

1. COMMENT:

Several commenters made requests to revise the number of hours of continuing education.

DEPARTMENT RESPONSE:

Education Law section 7710 establishes a mandatory requirement that each licensed master social worker (LMSW) and licensed clinical social worker (LCSW) complete 36 hours of acceptable continuing education during each three-year registration period.

2. COMMENT:

The commenter asked whether the continuing education requirement is the same for LMSWs and LCSWs.

DEPARTMENT RESPONSE:

Yes.

3. COMMENT:

A definition of continuing education hours could not be found in the proposed rule.

DEPARTMENT RESPONSE:

A definition is provided in section 74.10(h) for continuing education courses, including a minimum of 50 minutes for one hour of continuing education credit, and for credit-bearing courses completed in an approved college or university. The definition also provides that continuing education credit for other acceptable educational activities will be awarded as described in section 74.10(c)(2)(ii)(b).

4. COMMENT:

Several commenters asked whether continuing education hours earned in another jurisdiction or from a provider approved by another organization would be acceptable.

DEPARTMENT RESPONSE:

Other jurisdictions and associations must apply for approval in New York State in order for those hours to be acceptable to the Department.

5. COMMENT:

Several commenters expressed the concern that the proposed \$900 application fee for prospective approved providers may limit access to continuing education activities.

DEPARTMENT RESPONSE:

Education Law section 7710(3)(b) requires prospective providers to file an application with the Department and pay a fee; the proposed rule implements this statutory requirement. In addition, the proposed fee is the same amount as for entities that offer continuing education in other licensed professions and is only paid triennially.

6. COMMENT:

If a person earned certification as a psychotherapist at an institute, would credit for the classes and hours of practice be denied if the institute did not pay the \$900 fee to register with the Department?

DEPARTMENT RESPONSE:

Yes, the psychotherapy institute must be an approved provider to award continuing education credits for coursework.

7. COMMENT:

Several commenters stated that each licensee knows what learning activities he or she needs and expressed concerns that the proposed subjects were too limited.

DEPARTMENT RESPONSE:

The proposed rule defines a variety of acceptable continuing education activities and allows LMSWs and LCSWs the flexibility to complete activities that develop and enhance their ability to practice the profession of social work.

8. COMMENT:

Concern was expressed about whether there will be a sufficient number of providers of continuing education and asked whether organizations not specifically listed in section 74.10(i)(2), such as those providing child welfare, homeless services, and aging services, would qualify to become an approved provider?

DEPARTMENT RESPONSE:

Such entities may apply to become an approved provider if they meet the other requirements in section 74.10(i).

9. COMMENT:

Commenters asked whether a Department-approved provider would be able to approve other providers. In addition, commenters expressed interest in their organization becoming a provider or an approver of other providers.

DEPARTMENT RESPONSE:

Only the Department may approve a provider. A Department-approved provider may offer courses that are developed and taught by the provider's staff or other qualified instructors and is responsible for compliance with the standards established in law and the proposed rule. The approved provider must apply triennially for approval to offer continuing education and is subject to site visits and information requests by the Department to ensure compliance.

10. COMMENT:

Clarify the circumstances under which an employer could award continuing education credit for employees that complete in-service training or case conferences.

DEPARTMENT RESPONSE:

The organization must be approved by the Department to offer continuing education to social workers. In-service training and case conferences must be clearly related to the enhancement of social work practice, skills, and knowledge and the health, safety, and/or welfare of the public.

11. COMMENT:

Must individual social workers seeking to become approved providers of continuing education be incorporated?

DEPARTMENT RESPONSE:

An individual applying to become an approved provider must meet the requirements set forth in the proposed rule. The rule does not require incorporation or any particular form of business organization or structure.

12. COMMENT:

The commenter has cerebral palsy and believes the regulation should allow a licensee to complete continuing education courses by webinar.

DEPARTMENT RESPONSE:

The regulation does not prevent a licensee from completing continuing education courses by webinar. The law and proposed rule allow a licensee to complete a maximum of 12 hours of self-study in each three-year registration period. A self-study program is one that does not include live instruction, in person or otherwise, during which the student may communicate with the instructor and other students. However, webinars and other continuing education offerings during which the student may communicate and interact with others are not considered self-study and are, therefore, not limited.

13. COMMENT:

The time and energy required to attend continuing education activities would discriminate against licensees with disabilities or special needs.

DEPARTMENT RESPONSE:

The law and proposed rule allow the Department to adjust the continuing education requirement for a licensee who documents good cause that prevents compliance, which includes poor health or a specific physical or mental disability certified by an appropriate health care professional.

14. COMMENT:

The following comments and requests were received regarding the required continuing education hours:

- The proposed rule should not require licensees to complete one hour of acceptable continuing education each month for 36 months.
- Clarify the continuing education hours required for an LMSW or LCSW who has not practiced and wants to register his or her license in New York State.
- Could the Department provide a grace period from compliance for a licensee whose next registration period starts within 90 days of January 1, 2015 since approved coursework cannot be completed prior to that date and such a grace period would help licensees meet the requirements?

DEPARTMENT RESPONSE:

The law and proposed rule phase-in the continuing education requirement starting on January 1, 2015, such that each licensee, including one returning to practice, must complete one hour of acceptable continuing

education for each month in his or her registration period, after January 1, 2015. However, the licensee is not required to literally complete one hour in each month of the registration period, but is responsible for completing the number of required hours within the specified time period. The law and proposed rule allow the Department to adjust the requirement for good cause; if providers are not approved and courses are unavailable by January 1, 2015, the Department will explore such an option.

15. COMMENT:

Clarification is needed for social workers who are licensed in another jurisdiction and applying for licensure as to whether continuing education completed in another jurisdiction will be acceptable in New York State.

DEPARTMENT RESPONSE:

An individual who is applying for licensure in New York State and who was licensed and registered in another jurisdiction would have to complete coursework acceptable to New York State starting with his or her first registration period in New York State.

16. COMMENT:

Clarify the process by which a licensee, who has not completed the required activities or whose activities were disallowed by a Department audit, could remedy the deficiency.

DEPARTMENT RESPONSE:

The law and proposed rule allow a licensee who has not met the requirement to apply for a conditional registration, for up to one year, to allow him or her to practice during that period. During this period, the licensee could remedy any deficiency and complete the continuing education hours that would otherwise be required during that period. At the end of the conditional registration, the licensee would be eligible to register for the remainder of the registration period.

17. COMMENT:

The proposed rule to allow a licensee to apply for a one-year conditional registration should be very helpful, assuming a number of licensees will require this.

DEPARTMENT RESPONSE:

The commenter's support of the proposed rule is noted, however, it is not yet known how many licensees will apply for a conditional registration.

18. COMMENT:

Concern was expressed that the cost of continuing education will be borne by the underpaid social workers.

DEPARTMENT RESPONSE:

The cost of approved continuing education programs will vary based on the types of activities that are offered by approved providers. The proposed rule provides a variety of ways in which licensees can complete approved continuing education activities to provide flexibility and allow individuals to find activities that fit their budgets.

19. COMMENT:

Professional development activities unique to school social workers should be considered acceptable subjects, meet the requirements for mandatory continuing education, and exempt the school from the provider application fee.

DEPARTMENT RESPONSE:

A school district, board of cooperative educational services or other qualified organization could apply to become an approved provider of continuing education for licensed social workers and offer coursework relevant to school social work. The Department has determined that the application fee shall be applied to all prospective providers in a uniform manner.

20. COMMENT:

Given the diversity of New York State and the prevalence of bias in society, the commenter recommends that the list of acceptable subjects specifically include race, diversity, cultural and linguistic competency, and the immigrant experience. A broader listing of cross-disciplinary offerings should also be considered.

DEPARTMENT RESPONSE:

The suggested topics and offerings in other disciplines would be allowed within the proposed rule, if the course is clearly related to the enhancement of social work practice, skills, and knowledge and the health, safety, and/or welfare of the public and as long as the Department approves the provider.

21. COMMENT:

School districts would have to provide time off to allow school social workers to participate in continuing education activities. This may result in districts replacing school social workers with school counselors and school psychologists, who do not have to complete mandatory continuing education.

DEPARTMENT RESPONSE:

The proposed rule implementing Education Law section 7710, requiring mandatory continuing education for LMSWs and LCSWs, is statutory and cannot be changed by regulation.

22. COMMENT:

A commenter states that a list of approved providers should be avail-

able before the law takes effect, in order to allow licensees to comply with the requirement.

DEPARTMENT RESPONSE:

The Department will strive to approve providers in advance of the statute's January 1, 2015 effective date. However, the law and proposed rule require that continuing education activities be taken from approved providers on or after January 1, 2015.

23. COMMENT:

The Department should monitor any effect of the law on the number of licensed social workers registered to practice.

DEPARTMENT RESPONSE:

The Department plans to monitor the effect of the law.

24. COMMENT:

New York State should consider the development of a self-assessment tool that, along with periodic retesting, may represent the next generation of tools to be used in assessing continuing competence.

DEPARTMENT RESPONSE:

The commenter's suggestions may be considered by the Department in the future.

25. COMMENT:

Several commenters requested clarification of section 74.10(i)(3)(vi) which provides that presenters of didactic instruction may be persons who are not licensed by the State of New York as LMSWs or LCSWs but that the performance of activities that fall within the restricted scope of practice of the LMSW or LCSW must be done by individuals who are licensed and registered under Article 154 of the Education Law.

DEPARTMENT RESPONSE:

An unlicensed instructor may provide didactic instruction, including lectures and the use of role-plays, vignettes, and other activities to simulate professional practice. The instructor must be qualified as defined in section 74.10(i)(3)(ii)(c) of the proposed rule, however. The provision is intended to reinforce the provisions of Article 154 that prohibit an unlicensed person from providing professional services to a consumer.

NOTICE OF ADOPTION

Mathematics Graduation Requirements

I.D. No. EDU-08-14-00021-A

Filing No. 336

Filing Date: 2014-04-29

Effective Date: 2014-05-14

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

Action taken: Amendment of section 100.5(g)(2) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided) and 3204(3)

Subject: Mathematics graduation requirements.

Purpose: To provide flexibility in the transition to Common Core-aligned Regents Examinations in Mathematics by allowing, for a limited time and at the discretion of the applicable school district, students receiving Geometry (Common Core) instruction to take the Regents Examination in Geometry aligned to the 2005 Learning Standards in addition to the Regents Examination in Geometry (Common Core), and meet the mathematics requirement for graduation by passing either examination.

Text or summary was published in the February 26, 2014 issue of the Register, I.D. No. EDU-08-14-00021-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.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 the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on February 26, 2014, the State Education Department received the following comments:

1. COMMENT:

Under the proposed amendment, will students be required to take both the 2005 Geometry Regents exam and the Common Core Geometry exam during the 2014-2015 school year?

DEPARTMENT RESPONSE:

Students enrolled in a Common Core Geometry course in the 2014-15 school year who elect to take the Regents examination in order to meet diploma requirements, must take the Regents Examination in Geometry Common Core. In addition, at district discretion, the student may also take the Regents Examination in Geometry aligned to the 2005 Mathematics Standards in June 2015, August 2015 or January 2016. The student is not required to take both examinations. If a student does take the 2005 Regents Exam in addition to the Common Core Regents Exam, the higher of the two scores may be used for local transcript purposes.

2. COMMENT:

If school districts do not have the Common Core Geometry standards fully implemented for the 2014-2015 academic year, are students required to take both the 2005 Geometry Regents exam and the Common Core Geometry exam or can these students take only the 2005 Geometry exam?

DEPARTMENT RESPONSE:

This comment raises issues that are beyond the scope of the proposed amendment, which is to provide flexibility with respect to the Regents Examination in Geometry by allowing, at the discretion of the applicable school district and for the June 2015, August 2015 and January 2016 administrations only, students receiving Geometry (Common Core) instruction to take the Regents Examination in Geometry aligned to the 2005 Learning Standards in addition to the Regents Examination in Geometry (Common Core), and meet the mathematics requirement for graduation by passing either examination. School districts may choose or decline to exercise the flexibility provided by the proposed amendment. Any necessary additional clarifications will be provided through guidance to the field.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Mandatory Reporting of Information Regarding Possession, Sale, Use or Manufacture of Illegal Drugs on School Property/Functions

I.D. No. EDU-19-14-00009-P

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

Proposed Action: Addition of Part 88 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), (2) and (20) and 2854(1)(b); Civil Service Law, section 75-b; and Penal Law, arts. 220 and 221

Subject: Mandatory reporting of information regarding possession, sale, use or manufacture of illegal drugs on school property/functions.

Purpose: To establish a mandatory reporting requirement for school personnel, sanctions for noncompliance, and protection for school personnel who report.

Text of proposed rule: A new Part 88 is added to the Regulations of the Commissioner of Education, effective July 30, 2014, to read as follows:

Part 88

Mandatory Reporting of Possession, Sale or Use of Illegal Drugs on School Property and at School Functions

§ 88.1 Mandatory Reporting.

(a) For purposes of this section:

(1) Possession, sale, use or manufacture of illegal drug(s) on school grounds or school property, shall include, but need not be limited to, the following activities on school property or at a school function:

(i) crimes involving controlled substances as defined in Article 220 of the Penal Law; and

(ii) crimes involving marijuana as defined in Article 221 of the Penal Law.

(2) School property shall mean in or within any building, structure, athletic playing field, playground, parking lot, or land contained within the real property boundary line of a public elementary or secondary school; or in or on a school bus, as defined in section one hundred forty-two of the vehicle and traffic law.

(3) School function shall mean a school-sponsored extra-curricular event or activity.

(b) Mandatory Reporting. Any school district, board of cooperative educational services or charter school employee shall be required to report to the chief school administrator of the school any information that

a person has committed an act which raises a reasonable question as to whether that person has engaged in the possession, sale, use or manufacture of illegal drugs on school grounds or at a school function, in accordance with directions and procedures established by the Commissioner for the purpose of ensuring that appropriate actions are taken by the school so that illegal drugs are not possessed, used or sold on school property or at a school function.

(c) *Reasonable Question of Moral Character.* Any knowing failure to report the possession, sale or use of illegal drugs on school property or at a school function in accordance with subdivision (b) of this section when committed by an employee of a school district, board of cooperative educational services or charter school in a position for which a teaching or school leader certificate is required, shall be deemed to raise a reasonable question of moral character under Part 83 of this Title and shall be subject to referral to the Office of School Personnel Review and Accountability at the State Education Department to the extent provided in Section 83.1 of this Title.

(d) *Prohibition Against Taking Adverse Action Against Certain Employees for Filing a Report.* In accordance with section 75-b of the Civil Service Law, a school district or board of cooperative educational services shall not dismiss or take other disciplinary or adverse action against an employee because he/she submitted a report pursuant to subdivision (b) of this section.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, NYS Education Department, Office of Higher Education, EB Room 979, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: regcomments@mail.nysed.gov

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

1. STATUTORY AUTHORITY:

Education Law section 207 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 305 (1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and shall execute all educational policies determined by the Board of Regents.

Paragraph (b) of subdivision (1) of Education Law section 2854 provides that charter schools shall meet the same health and safety requirements required of other public schools.

Articles 220 and 221 of the Penal Law set forth the definitions of and the penalties for possession and sale of controlled substances and marijuana.

Civil Service Law section 75-b(2)(a) prohibits a public employer from dismissing or taking other disciplinary action or other adverse personnel action against a public employee regarding the employee's employment because the employee discloses to a governmental body information regarding a violation of a law, rule or regulations which creates a presents a substantial danger to the public health or safety or which the employee reasonably believes to be true and reasonably believes constitutes an improper governmental action.

2. LEGISLATIVE OBJECTIVES:

The amendment carries out the legislative objectives of the above statutes by fostering a safe and drug free learning environment for students and school personnel.

3. NEEDS AND BENEFITS:

In February 2014, illegal drugs and drug paraphernalia were reportedly discovered in the faculty bathroom of the Benjamin Cosor Elementary School in the Fallsburg Central School District. It has also been reported that illegal drugs and drug paraphernalia were discovered in the same location in December 2013. Law enforcement continues to actively investigate these incidents, with the full cooperation of the school district.

The Department recognizes the immense responsibility to foster and promote safe and drug-free learning environments for our students and employees. The use of illegal drugs or the possession of drug paraphernalia on school property must not be tolerated. It is therefore recommended that the Department establish a mandatory reporting requirement for

school personnel, who learn of the possession, sale, use or manufacture of illegal drugs on school grounds or school property, and sanction those who fail to comply. The definition of school property encompasses the area, in, or within any building, structure, athletic playing field, playground, parking lot, or land contained within the real property boundary line or a public elementary or secondary school; or in or on a school bus. School function is defined as any school-sponsored extra-curricular event or activity. Requiring such reporting will serve to immediately protect students and staff from the dangers of illegal drugs, for which there is no tolerance on school grounds or at school functions.

Additionally, it is recommended that certain employees who report suspected drug use or possession are protected from retribution. Under Civil Service Law § 75-b, protections exist for public employees who report violations of "a law, rule, or regulation" that the reporting person reasonably believes has occurred.

The proposed amendment further clarifies that any knowing failure to report the possession, sale or use of illegal drugs on school property, or at a school function, shall be deemed to raise a reasonable question of moral character and certified teachers and administrators who fail to report such information shall be subject to referral to the Office of School Personnel Review and Accountability pursuant to Part 83 of the Regulations of the Commissioner.

Providing for the safety of our students and staff is critically important. The proposed amendments enhance the safety and wellbeing of students and employees in our school districts. First, the regulation requires the reporting of the possession, sale, use or manufacture of illegal drugs on school property, or at a school function. Second, the proposed amendments serve to protect certain school district personnel, who file reports of suspected drug possession, sale, use or manufacture from retaliation by prohibiting disciplinary or any other adverse action as the result of the filing of a report. Most importantly, the regulation serves to deter illegal drug use on school property while at the same time encouraging a culture of ethical conduct by school employees by serving notice that any suspected drug use or possession will be reported. Additionally, the amendment further maintains a safe and healthy school environment by encouraging the prompt reporting of such activity by raising a reasonable question of moral character subject to referral to the Office of School Personnel Review and Accountability, for any certified employee who fails to report suspected violations of this regulation.

4. COSTS:

(a) **Costs to State government:** The proposed amendment will not impose any additional costs on State government including the State Education Department.

(b) **Costs to local governments:** The amendment will not impose any additional costs on local governments.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES, except that it requires school personnel to report the possession of drugs or drug paraphernalia on school property as defined in the proposed amendment.

6. PAPERWORK:

See section 4 above.

7. DUPLICATION:

The amendment does not duplicate any existing State or Federal requirements.

8. ALTERNATIVES:

No alternatives were considered because the State Education Department believes the proposed amendment adequately addresses the safety concerns raised by the discovery of drugs at the Benjamin Cosor Elementary School in the Fallsburg Central School District.

9. FEDERAL STANDARDS:

There are no Federal standards that require school personnel to report the discovery of drugs or drug paraphernalia on school property as defined by the amendment.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted at the September 2014 Regents meeting and will become effective on October 1, 2014.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed amendment is to foster safe and drug free learning environments for our students and employees. Specifically, the proposed amendment requires school personnel to report the possession, sale, use or manufacture of illegal drugs on school property, or at a school function, and to sanction those who fail to comply. Additionally, the proposed amendment serves to protect certain school district personnel, who file reports of suspected drug possession, sale, use or manufacture from retaliation by prohibiting disciplinary or any other adverse action as the result of the filing of a report. The proposed amendment does not

impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses. Because it is evident from the nature of the amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and one was taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The rule applies to school personnel in each of the school districts and boards of cooperative educational services ("BOCES") in the State.

2. COMPLIANCE REQUIREMENTS:

In February 2014, illegal drugs and drug paraphernalia were reportedly discovered in the faculty bathroom of the Benjamin Cosor Elementary School in the Fallsburg Central School District. It has also been reported that illegal drugs and drug paraphernalia were discovered in the same location in December 2013. Law enforcement continues to actively investigate these incidents, with the full cooperation of the school district.

The Department recognizes the immense responsibility to foster and promote safe and drug-free learning environments for our students and employees. The use of illegal drugs or the possession of drug paraphernalia on school property must not be tolerated. It is therefore recommended that the Department establish a mandatory reporting requirement for school personnel, who learn of the possession, sale, use or manufacture of illegal drugs on school grounds or school property, and sanction those who fail to comply. The definition of school property encompasses the area, in, or within any building, structure, athletic playing field, playground, parking lot, or land contained within the real property boundary line or a public elementary or secondary school; or in or on a school bus. School function is defined as any school-sponsored extra-curricular event or activity. Requiring such reporting will serve to immediately protect students and staff from the dangers of illegal drugs, for which there is no tolerance on school grounds or at school functions.

Additionally, it is recommended that certain employees who report suspected drug use or possession are protected from retribution. Under Civil Service Law § 75-b, protections exist for public employees who report violations of "a law, rule, or regulation" that the reporting person reasonably believes has occurred.

The proposed amendment further clarifies that any knowing failure to report the possession, sale or use of illegal drugs on school property, or at a school function, shall be deemed to raise a reasonable question of moral character and certified teachers and administrators who fail to report such information shall be subject to referral to the Office of School Personnel Review and Accountability pursuant to Part 83 of the Regulations of the Commissioner.

Providing for the safety of our students and staff is critically important. The proposed amendments enhance the safety and wellbeing of students and employees in our school districts. First, the regulation requires the reporting of the possession, sale, use or manufacture of illegal drugs on school property, or at a school function. Second, the proposed amendments serve to protect certain school district personnel, who file reports of suspected drug possession, sale, use or manufacture from retaliation by prohibiting disciplinary or any other adverse action as the result of the filing of a report. Most importantly, the regulation serves to deter illegal drug use on school property while at the same time encouraging a culture of ethical conduct by school employees by serving notice that any suspected drug use or possession will be reported. Additionally, the amendment further maintains a safe and healthy school environment by encouraging the prompt reporting of such activity by raising a reasonable question of moral character subject to referral to the Office of School Personnel Review and Accountability, for any certified employee who fails to report suspected violations of this regulation.

3. PROFESSIONAL SERVICES:

The proposed rule does not impose any additional professional services requirements on school districts or BOCES.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on school districts and BOCES beyond those currently imposed.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional costs or technological requirements on school districts or BOCES beyond those already imposed.

6. MINIMIZING ADVERSE IMPACT:

The State Education Department believes the proposed amendment is necessary to address the safety concerns raised by the discovery of drugs at the Benjamin Cosor Elementary School in the Fallsburg Central School District. Therefore, no alternatives were considered.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect school personnel, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

2. REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

In February 2014, illegal drugs and drug paraphernalia were reportedly discovered in the faculty bathroom of the Benjamin Cosor Elementary School in the Fallsburg Central School District. It has also been reported that illegal drugs and drug paraphernalia were discovered in the same location in December 2013. Law enforcement continues to actively investigate these incidents, with the full cooperation of the school district.

The Department recognizes the immense responsibility to foster and promote safe and drug-free learning environments for our students and employees. The use of illegal drugs or the possession of drug paraphernalia on school property must not be tolerated. It is therefore recommended that the Department establish a mandatory reporting requirement for school personnel, who learn of the possession, sale, use or manufacture of illegal drugs on school grounds or school property, and sanction those who fail to comply. The definition of school property encompasses the area, in, or within any building, structure, athletic playing field, playground, parking lot, or land contained within the real property boundary line or a public elementary or secondary school; or in or on a school bus. School function is defined as any school-sponsored extra-curricular event or activity. Requiring such reporting will serve to immediately protect students and staff from the dangers of illegal drugs, for which there is no tolerance on school grounds or at school functions.

Additionally, it is recommended that certain employees who report suspected drug use or possession are protected from retribution. Under Civil Service Law § 75-b, protections exist for public employees who report violations of "a law, rule, or regulation" that the reporting person reasonably believes has occurred.

The proposed amendment further clarifies that any knowing failure to report the possession, sale or use of illegal drugs on school property, or at a school function, shall be deemed to raise a reasonable question of moral character and certified teachers and administrators who fail to report such information shall be subject to referral to the Office of School Personnel Review and Accountability pursuant to Part 83 of the Regulations of the Commissioner.

Providing for the safety of our students and staff is critically important. The proposed amendments enhance the safety and well-being of students and employees in our school districts. First, the regulation requires the reporting of the possession, sale, use or manufacture of illegal drugs on school property, or at a school function. Second, the proposed amendments serve to protect certain school district personnel, who file reports of suspected drug possession, sale, use or manufacture from retaliation by prohibiting disciplinary or any other adverse action as the result of the filing of a report. Most importantly, the regulation serves to deter illegal drug use on school property while at the same time encouraging a culture of ethical conduct by school employees by serving notice that any suspected drug use or possession will be reported. Additionally, the amendment further maintains a safe and healthy school environment by encouraging the prompt reporting of such activity by raising a reasonable question of moral character subject to referral to the Office of School Personnel Review and Accountability, for any certified employee who fails to report suspected violations of this regulation.

3. COSTS:

There are no additional costs imposed by the proposed amendment.

4. MINIMIZING ADVERSE IMPACT:

The State Education Department does not believe that making a change for school personnel who live or work in rural areas is warranted because uniform standards are necessary across the State to ensure the security of student and school personnel.

5. RURAL AREA PARTICIPATION:

The State Education Department has sent the proposed amendment to the Rural Advisory Committee, which has members who live or work in rural areas across the State.

Job Impact Statement

The purpose of the proposed amendment is to foster a safe and drug free learning environment for students and school personnel. Specifically, the proposed amendment requires school personnel to report the possession, sale, use or manufacture of illegal drugs on school property, or at a school function, and to sanction those who fail to comply. Additionally, the proposed amendment serves to protect certain school district personnel, who file reports of suspected drug possession, sale, use or manufacture from retaliation by prohibiting disciplinary or any other adverse action as the result of the filing of a report. Because it is evident from the nature of

the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

Transfer Credit for Students in Office of Children and Family Services (OCFS) Education Programs

I.D. No. EDU-19-14-00010-P

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

Proposed Action: Amendment of section 100.5(d) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 210 (not subdivided), 215 (not subdivided), 305(1), (2) and 309 (not subdivided)

Subject: Transfer credit for students in Office of Children and Family Services (OCFS) education programs.

Purpose: To provide for transfer credit for OCFS students upon attestation of chief program administrator.

Text of proposed rule: 1. Paragraph (1) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective July 30, 2014, as follows:

(1) Credit by examination. A student may earn a maximum of 6½ units of credit for either a Regents or local diploma without completing units of study for such units of credit, if:

(i) based on the student’s past academic performance, the superintendent of a school district or the chief administrative officer of a registered nonpublic high school *or the chief administrator of an educational program administered by a State agency pursuant to Education Law section 112 and Part 116 of this Title*, or his or her designee, determines that the student will benefit academically by exercising this alternative;

(ii) . . .

(iii) the student passes an oral examination or successfully completes a special project to demonstrate proficiency, in such knowledge, skills and abilities normally developed in the course but not measured by the relevant Regents examination or State-approved examination if used, as determined by the principal *or the chief administrator of an educational program administered by a State agency*; and

(iv) . . .

(v) . . .

(vi) *Credit by examination shall be awarded to a student enrolled in an educational program administered by a State agency pursuant to paragraph (5) of this subdivision.*

2. Paragraph (5) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective July 30, 2014, as follows:

(5) Transfer credit. Transfer credit is awarded for work done outside the registered New York State high school awarding the credit.

(i) The principal shall evaluate the transcript or other records of a transfer student enrolling in a New York State high school. Based on the student’s transcript or other records, the principal shall award the appropriate units of transfer credit towards a high school diploma.

(a) *Registered high schools.* The principal shall grant transfer credit for all credit awarded by any New York State registered public or nonpublic high schools.

(b) *Other educational/cultural institutions and independent study.*

(1) *Except as provided in subclause (2) of this clause, [The] the principal, after consultation with relevant faculty, may award transfer credit for work done at other educational and cultural institutions and for work done through independent study. The decision as to whether or not to award transfer credit for work done at educational institutions other than New York State registered high schools shall be based on whether the record indicates that the work is consistent with New York State commencement learning standards and is of comparable scope and quality to that which would have been done in the school awarding the credit.*

(2) *Transfer credit by attestation (State agency educational programs).*

(i) *Definitions. For purposes of this subdivision, “State agency” means a State department or agency or political subdivision, except a board of education or a board of cooperative educational services, that provides an educational program pursuant to Education Law section 112 and Part 116 of this Title.*

(ii) *A principal shall award transfer credit to any student for credit awarded while the student attended an educational program administered by a State agency pursuant to Education Law section 112 and Part 116 of this Title, upon the attestation of the chief administrator of such program, in a format prescribed by the commissioner, of the following:*

(a) *the student:*

(1) *has completed coursework that is aligned with the applicable New York State commencement-level learning standards, including the New York State Common Core Learning Standards, and that meets the requirements of this Part for the award of units of credit including, but not limited to, the requirement for 180 minutes of instruction per week throughout the school year, or the equivalent, as set forth in section 100.1(a) of this Part; and/or*

(2) *has met the requirements for the award of credit by examination pursuant to paragraph (1) of this subdivision; and/or*

(3) *has met the requirements for the award of make-up credit pursuant to paragraph (8) of this subdivision; and/or*

(4) *has met the requirements for the award of credit for independent study pursuant paragraph (9) of this subdivision; and/or*

(5) *has met the requirements for the award of credit for online and/or blended courses pursuant to paragraph (10) of this subdivision; and*

(b) *the student was provided instruction by a teacher certified pursuant to Part 80 of this Title or, where the coursework was for make-up credit or in online and/or blended courses, the student was provided instruction in accordance with the requirements of paragraphs (8) and (10), respectively, of this subdivision.*

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

3. Paragraph (8) of subdivision (d) of section 100.5 of the Regulations of the Commissioner is amended, effective July 30, 2014, as follows:

(8) Making up incomplete or failed course credit. Commencing July 1, 2011 and thereafter, a school district, registered nonpublic school, [or] charter school *or the chief administrator of an educational program administered by a State agency pursuant to Education Law section 112 and Part 116 of this Title* may provide a student, who had the opportunity to complete a unit of study in a given high school subject but who failed to demonstrate mastery of the learning outcomes for such subject, with an opportunity to make up a unit of credit for such subject toward either a Regents or local diploma, pursuant to the following:

(i) . . .

(ii) The make-up credit program shall:

(a) . . .

(b) . . .

(c) ensure that the student receives equivalent, intensive instruction in the subject matter area provided, as applicable, under the direction and/or supervision of;

(1) a school district teacher who is certified in the subject matter area; or

(2) a teacher from a board of cooperative educational services (BOCES) that contracts with the school district to provide instruction in the subject matter area pursuant to Education Law § 1950, and who is certified in such area; or

(3) a teacher of the subject matter area in the registered nonpublic school, [or] charter school *or educational program administered by a State agency pursuant to Education Law section 112 and Part 116 of this Title.*

(iii) . . .

(iv) . . .

(v) *Make up credit shall be awarded to a student enrolled in an educational program administered by a State agency pursuant to paragraph (5) of this subdivision.*

4. Paragraph (9) of subdivision (d) of section 100.5 of the Regulations of the Commissioner is amended, effective July 30, 2014, as follows:

(9) Credit for independent study. Students enrolled in a school district, a charter school, [or] a registered nonpublic school *or an educational program administered by a State agency pursuant to Education Law section 112 and Part 116 of this Title* may earn a maximum of three units of elective credit towards a Regents diploma through independent study, pursuant to the following:

(i) . . .

(ii) . . .

(iii) The principal, after consultation with relevant faculty, shall award credit to the student for successful completion of the independent study and demonstrated mastery of the learning outcomes for the subject. *Credit for independent study shall be awarded to a student enrolled in an educational program administered by a State agency pursuant to paragraph (5) of this subdivision.*

- (iv) For purposes of this paragraph, independent study shall be:
- (a) . . .
 - (b) . . .
 - (c) . . .
 - (d) . . .
 - (v) . . .

5. Paragraph (10) of subdivision (d) of section 100.5 of the Commissioner's Regulations is amended, effective July 30, 2014, as follows:

(10) Credit for online and blended courses.

(i) . . .

(ii) A school district, a charter school, [or] a registered nonpublic school or the chief administrator of an educational program administered by a State agency pursuant to Education Law section 112 and Part 116 of this Title may provide its students with an opportunity to earn units of credit towards a Regents diploma through online and/or blended course study, pursuant to the following:

(a) . . .

(b) The school district, registered nonpublic school, [or] charter school or the chief administrator of an educational program administered by a State agency shall ensure that:

(1) courses are aligned with the applicable New York State learning standards for the subject area;

(2) courses provide for documentation of student mastery of the learning outcomes for such subjects, including passing the Regents examination in the subject and/or other assessment in the subject if required for earning a diploma;

(3) instruction is provided by or under the direction and/or supervision of:

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) in the case of a charter school, a teacher of the subject area from a charter school; or

(vi) in the case of an educational program administered by a State agency, a teacher of the subject area from such program.

(4) . . .

(5) . . .

(iii) Credit for online and blended courses shall be awarded to a student enrolled in an educational program administered by a State agency pursuant to paragraph (5) of this subdivision.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Ken Slentz, Deputy Commissioner, State Education Department, Office of P-12 Education, State Education Building 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

1. STATUTORY AUTHORITY:

Education Law section 101 continues existence of Education Department, with Board of Regents as its head, and authorizes Regents to appoint Commissioner of Education as Department's Chief Administrative Officer, which is charged with general management and supervision of all public schools and educational work of State.

Education Law section 207 empowers Regents and Commissioner to adopt rules and regulations to carry out State education laws and functions and duties conferred on Department.

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 210 authorizes Regents to register domestic and foreign institutions in terms of State standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and professions in the State.

Education Law section 215 authorizes Commissioner to require schools

and school districts to submit reports containing such information as Commissioner shall prescribe.

Education Law section 305(1) and (2) provide Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents. Section 305(20) provides Commissioner shall have such further powers and duties as charged by the Regents.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges Commissioner with general supervision of boards of education and their management and conduct of all departments of instruction.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement.

3. NEEDS AND BENEFITS:

Education Law § 112 and Part 116 of the Commissioner's Regulations relate to standards for educational programs and services for students in full-time residential care in homes or facilities operated or supervised by a State department or agency or political subdivision, such as the Office of Children and Family Services (OCFS) and the Office of Mental Health.

Commissioner's Regulation § 100.5(d)(5) currently provides that a principal must award transfer credit to students for any coursework they completed at a registered New York State high school, but may award transfer credit for work done at educational institutions other than New York State registered high schools "based on whether the record indicates that the work is consistent with New York State commencement learning standards and is of comparable scope and quality to that which would have been done in the school awarding the credit." Under this provision, students who attend educational programs operated by OCFS and other State agencies pursuant to Education Law § 112 and Part 116 of the Commissioner's Regulations are not automatically granted credit for their coursework because such facilities are not registered high schools. Rather, upon a student transferring to a public school, each principal makes an individual determination to grant or deny the student credit for such coursework based upon whether the principal deems the coursework done at a State agency facility to be comparable.

As a result, there is no consistency across the State in how coursework completed at these State agency facilities is credited. Because students are unsure of the degree to which principals will award credit for work done at State agency facilities, some students find this a disincentive to re-enroll in school once released from such facilities. To the extent that principals deny credits for such coursework, the challenges for students who reenroll and attempt to earn a high school diploma become even greater.

To address this issue, the proposed amendment provides that principals of registered public high schools shall grant transfer credit to a student for credit awarded while the student attended an educational program administered by a State agency pursuant to Education Law § 112 and Part 116 of the Commissioner's Regulations, upon the attestation of the chief administrator of such program that:

- the student has completed coursework that is aligned with the applicable New York State commencement-level learning standards, including the New York State Common Core Learning Standards, and meets the requirements for the award of units of credit including, but not limited to, the requirement for 180 minutes of instruction per week throughout the school year, or the equivalent; and
- the student was provided instruction by a teacher certified pursuant to Part 80 of this Title.

Furthermore, in order to ensure that students attending these State agency education programs are eligible for transfer credit on the same basis as students in the public schools with respect to the alternative methods for earning credit, the proposed amendment also provides that principals of registered public high schools must award transfer credit upon attestation of the chief administrator of the State agency educational program that the student has met the requirements for the award of credit by examination, make up credit, independent study, and/or online/blended courses.

4. COSTS:

Cost to the State: none.

Costs to local government: none.

Cost to private regulated parties: none.

Cost to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department.

The proposed amendment merely provides for the award of credit by principals of public high schools to students who are awarded credit while attending an educational program administered by OCFS and other State agencies pursuant to Education Law § 112 and Part 116 of the Commissioner's Regulations, upon attestation of the chief administrator of such program that the program meets certain specified criteria.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment merely provides for the award of credit by principals of public high schools to students who are awarded credit while attending an educational program administered by OCFS and other State agencies pursuant to Education Law § 112 and Part 116 of the Commissioner's Regulations, upon attestation of the chief administrator of such program that the program meets certain specified criteria.

6. PAPERWORK:

The proposed amendment does not impose any specific recordkeeping, reporting or other paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

The proposed amendment is necessary to implement Regents policy relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, by ensuring that students attending educational programs administered by OCFS and other State agencies pursuant to Education Law § 112 and Part 116 of the Commissioner's Regulations are eligible for transfer credit on the same basis as students in the public schools. There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated parties will be able to achieve compliance with the rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements and higher levels of student achievement, and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Specifically, the proposed amendment provides for the award of credit by principals of public high schools to students who are awarded credit while attending an educational program administered by the Office of Children and Family Services (OCFS) and other State agencies pursuant to Education Law § 112 and Part 116 of the Commissioner's Regulations, upon attestation of the chief administrator of such program that the program meets certain specified criteria.

Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 public school districts in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment provides that principals of registered public high schools shall grant transfer credit to a student for credit awarded while the student attended an educational program administered by a State agency pursuant to Education Law § 112 and Part 116 of the Commissioner's Regulations, upon the attestation of the chief administrator of such program that:

- the student has completed coursework that is aligned with the applicable New York State commencement-level learning standards, including the New York State Common Core Learning Standards, and meets the requirements for the award of units of credit including, but not limited to, the requirement for 180 minutes of instruction per week throughout the school year, or the equivalent; and
- the student was provided instruction by a teacher certified pursuant to Part 80 of this Title.

Furthermore, in order to ensure that students attending these State agency education programs are eligible for transfer credit on the same basis as students in the public schools with respect to the alternative methods for earning credit, the proposed amendment also provides that principals of registered public high schools must award transfer credit upon attestation of the chief administrator of the State agency educational program that the student has met the requirements for the award of credit by examination, make up credit, independent study, and/or online/blended courses.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on school districts. The proposed amendment merely provides for the award of credit by principals of public high schools to students who are awarded credit while attending an educational program administered by OCFS and other State agencies pursuant to Education Law § 112 and Part 116 of the Commissioner's Regulations, upon attestation of the chief administrator of such program that the program meets certain specified criteria.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional costs or new technological requirements on school districts or charter schools.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Regents policy relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, by ensuring that students attending educational programs administered by OCFS and other State agencies pursuant to Education Law § 112 and Part 116 of the Commissioner's Regulations are eligible for transfer credit on the same basis as students in the public schools. The proposed amendment merely provides for the award of credit by principals of public high schools to students who are awarded credit while attending an educational program administered by OCFS and other State agencies pursuant to Education Law § 112 and Part 116 of the Commissioner's Regulations, upon attestation of the chief administrator of such program that the program meets certain specified criteria.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts.

8. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, by ensuring that students attending educational programs administered by OCFS and other State agencies pursuant to Education Law § 112 and Part 116 of the Commissioner's Regulations are eligible for transfer credit on the same basis as students in the public schools. There were no significant alternatives and none were considered.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 695 public school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment provides that principals of registered public high schools shall grant transfer credit to a student for credit awarded while the student attended an educational program administered by a State agency pursuant to Education Law § 112 and Part 116 of the Commissioner's Regulations, upon the attestation of the chief administrator of such program that:

- the student has completed coursework that is aligned with the applicable New York State commencement-level learning standards, including the New York State Common Core Learning Standards, and meets the requirements for the award of units of credit including, but not limited to, the requirement for 180 minutes of instruction per week throughout the school year, or the equivalent; and
- the student was provided instruction by a teacher certified pursuant to Part 80 of this Title.

Furthermore, in order to ensure that students attending these State agency education programs are eligible for transfer credit on the same basis as students in the public schools with respect to the alternative methods for earning credit, the proposed amendment also provides that principals of registered public high schools must award transfer credit upon attestation of the chief administrator of the State agency educational

program that the student has met the requirements for the award of credit by examination, make up credit, independent study, and/or online/blended courses.

The proposed amendment does not impose any additional professional services requirements.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on school districts. The proposed amendment merely provides for the award of credit by principals of public high schools to students who are awarded credit while attending an educational program administered by OCFS and other State agencies pursuant to Education Law § 112 and Part 116 of the Commissioner’s Regulations, upon attestation of the chief administrator of such program that the program meets certain specified criteria.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Regents policy relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, by ensuring that students attending educational programs administered by OCFS and other State agencies pursuant to Education Law § 112 and Part 116 of the Commissioner’s Regulations are eligible for transfer credit on the same basis as students in the public schools. The proposed amendment merely provides for the award of credit by principals of public high schools to students who are awarded credit while attending an educational program administered by OCFS and other State agencies pursuant to Education Law § 112 and Part 116 of the Commissioner’s Regulations, upon attestation of the chief administrator of such program that the program meets certain specified criteria.

Because the Regents policy upon which the proposed amendment is based applies to all school districts in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department’s Rural Advisory Committee, whose membership includes school districts located in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, by ensuring that students attending educational programs administered by OCFS and other State agencies pursuant to Education Law § 112 and Part 116 of the Commissioner’s Regulations are eligible for transfer credit on the same basis as students in the public schools. There were no significant alternatives and none were considered.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements and higher levels of student achievement, and will not have an adverse impact on jobs or employment opportunities. Specifically, the proposed amendment provides for the award of credit by principals of public high schools to students who are awarded credit while attending an educational program administered by the Office of Children and Family Services (OCFS) and other State agencies pursuant to Education Law § 112 and Part 116 of the Commissioner’s Regulations, upon attestation of the chief administrator of such program that the program meets certain specified criteria. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

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

Recreational Harvest Regulations for Summer Flounder (Fluke) and Black Sea Bass

I.D. No. ENV-19-14-00020-EP

Filing No. 343

Filing Date: 2014-04-29

Effective Date: 2014-04-29

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

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

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105, 13-0340-b and 13-0340-f

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

Specific reasons underlying the finding of necessity: These regulations are necessary for New York to optimize recreational fishing opportunities available to recreational anglers while limiting harvest to remain in compliance with the Fishery Management Plan (FMP) for Summer Flounder, Scup and Black Sea Bass adopted by the Atlantic States Marine Fisheries Commission (ASMFC). Each member state of ASMFC is expected to promulgate regulations that comply with FMPs adopted by ASMFC. These regulations are needed to properly manage the State’s recreational fisheries and prevent the State from exceeding the State’s recreational harvest limit, as assigned by the FMP. The proposed regulations will decrease the size limit for summer flounder, reduce the recreational fishing season and increase the possession limit. These regulations will also reduce the recreational fishing season for black sea bass.

The promulgation of this regulation on an emergency basis is necessary because the normal rule making process would not promulgate these regulations in the time frame necessary to prevent the 2014 recreational summer flounder season from opening prematurely on May 1, 2014. May 1 is the summer flounder opening date currently in regulation. The proposed opening for the 2014 summer flounder season is May 17, 2014. This rule must be in effect by April 30, 2014 to prevent the summer flounder season from opening on May 1. (Similarly, the opening date for the recreational black sea bass season has been pushed back five days, from July 10 in 2013 to July 15 in 2014.)

New York State determined its 2014 recreational management measures for summer flounder and black sea bass in mid-March after deliberations and a vote by ASMFC. If this rule making were to be promulgated by the normal rule making process, it would not be in effect until after the May 1, the previous year’s opening date. This would result in recreational summer flounder harvest before the proposed opening date, a potential overharvest of summer flounder, and a finding of out-of-compliance by ASMFC. Promulgating this regulation on an emergency basis is necessary to prevent the recreational summer flounder and black sea bass seasons from opening too early. It is in the best interests of the general welfare of New York State’s marine recreational fishing interests not to delay the implementation of these regulations.

Subject: Recreational harvest regulations for summer flounder (fluke), and black sea bass.

Purpose: To maximize recreational angler opportunities for popular finfish species while staying in compliance with the ASMFC.

Text of emergency/proposed rule: Existing subdivision 40.1(f) of 6 NYCRR is amended to read as follows:

Species Striped bass through Atlantic cod remain the same. Species Summer flounder is amended to read as follows:

40.1(f) Table A – Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Summer flounder	May [1]17 – Sept. [29]21	[19]18” TL	[4]5

Species Yellowtail flounder through Scup (porgy) all other anglers remain the same. Species Black sea bass is amended to read as follows:

Species	Open Season	Minimum Length	Possession Limit
Black sea bass	July [10]15 – Dec. 31	13" TL	8

Species Anadromous river herring through Oyster toadfish remain the same.

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 July 27, 2014.

Text of rule and any required statements and analyses may be obtained from: Stephen Heins, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0435, email: swheins@gw.dec.state.ny.us

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

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

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the Department.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 11-0303, 13-0105, 13-0340-b, and 13-0340-f authorize the Department of Environmental Conservation (DEC or the department) to establish by regulation the open season, size, catch limits, possession and sale restrictions and manner of taking for summer flounder and black sea bass.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies, and interstate fishery management plans.

3. Needs and benefits:

These regulations are necessary for New York to maintain compliance with the Interstate Fishery Management Plan (FMP) for Summer Flounder, Scup and Black Sea Bass adopted by the Atlantic States Marine Fisheries Commission (ASMFC). New York, as a member state of ASMFC, must comply with the provisions of the Interstate Fishery Management Plans adopted by ASMFC. These FMPs are designed to promote the long-term sustainability of marine species, preserve the States' marine resources, and protect the interests of both commercial and recreational fishermen. All member states must promulgate any necessary regulations that implement the provisions of the FMPs to remain in compliance with the FMPs. If ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state comes into compliance with the FMP.

In 2014, New York is part of a mandatory region with Connecticut and New Jersey and must have identical recreational summer flounder size limits, possession limits, and season length. These include a 1 inch decrease in minimum size, 1 additional fish added to the possession limit, and a loss of 24 days from the season, at least 16 of which must come from May and June because of harvest concerns. Overall, these changes are projected allow marine recreational anglers to harvest 150 percent of the summer flounder landed in New York in 2013. It is hoped that these relaxed regulations will increase interest and fishing activity, resulting in economic benefits to a number of associated businesses.

Black sea bass rules will be slightly more restrictive and may have negative impacts upon business. However, the proposed rule must be in place so that New York remains in compliance with ASMFC and reduces harvest.

4. Costs:

There are no new costs to state and local governments from this action. The department will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational harvesters, party and charter boat operators and other recreational support industries of the new rules.

There may be negative impacts to private regulated parties due to the more restrictive seasons for both species; however these may hopefully be offset by increased angler interest in pursuing more available, legal-sized, summer flounder.

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

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

8. Alternatives:

The measures proposed in this rule making are one of a suite of different combinations of season length, minimum size, and possession limit that would change New York's recreational fisheries regulations while fulfilling the State's obligations to the ASMFC to control harvest. MRAC had an opportunity to weigh in on their preference for different forms of recreational fishery management at both the January and the March meetings.

Summer Flounder – Regional measures considered for summer flounder included different member states, possession limits, season lengths and start dates. Regional measures had to consider the preferences of all member states, not New York alone. Under state-by-state Conservation Equivalency, significantly shorter seasons and the current size and possession limits were considered. The No Action Alternative for summer flounder will find New York out of compliance with the ASMFC. Under Conservation Equivalency, New York is required to reduce its harvest by approximately 15 percent. Under regional management imposed by Addendum XXV, New York is required to have the same size limit, possession limit, and season length as Connecticut and New Jersey.

Black Sea Bass – ASMFC requires New York to reduce its recreational black sea bass harvest by 7 percent. Season loss from both the beginning and end of the fishing season was considered. In addition, lowering the possession limit for at least part of the fishing season was considered. The No Action Alternative for black sea bass will find New York out of compliance with ASMFC and may lead to coast-wide recreational overharvest of black sea bass.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC and Regional Fishery Management Council FMPs.

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news releases and via DEC's website of the changes to the regulations. The emergency regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Effect of rule:

The Atlantic State Marine Fisheries Commission (ASMFC) facilitates cooperative management of marine and anadromous fish species among the fifteen Atlantic Coast member states. The principal mechanism for implementation of cooperative management of migratory fish is the ASMFC's Interstate Fishery Management Plans (FMPs) for individual species or groups of fish. The FMPs are designed to promote the long-term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

ASMFC recently adopted quota changes for summer flounder, scup and black sea bass. The Department of Environmental Conservation (DEC or the department) now seeks to amend its regulations to comply with the requirements of the FMP. There are severe consequences for failure to comply with FMPs. If ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state comes into compliance with the FMP. Furthermore, failure to take required actions to protect our marine and anadromous resources may lead to the collapse of the targeted species' populations. Either situation could have a significant adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries.

Those most affected by the proposed rule are recreational anglers, licensed party and charter businesses, and retail and wholesale marine bait and tackle shops operating in New York State. The department consulted with the Marine Resources Advisory Council (MRAC) and other individuals who chose to share their views on marine recreational fishing management measures. The new regulations will reduce the minimum size and increase the possession limit for summer flounder, intended to increase the opportunity for anglers to take fish home. The season lengths for summer flounder and black sea bass will decrease by 24 and 5 days, respectively. It is hoped that the more liberal aspects of the regulations will encourage anglers to fish and support the recreational fishing industries but acknowledge that the loss of days of open season, particularly for summer flounder during May, will be a hardship to some businesses.

The summer flounder regulations proposed for New York in 2014 are part of a regional management solution. They are projected to allow New York to harvest more summer flounder than the state would under the more traditional state-by-state system and provides New York parity with its neighbors for the first time in many years. Regional management requires a compromise between all members of a region (in this case Connecticut, New York, and New Jersey) and therefore flexibility and the ability to customize are diminished. The shortened season, particularly the loss of 16 days from the beginning of May, will negatively impact a number of fishing and related businesses. Some geographic areas of Long

island will experience this impact more acutely than others, in particular those who fish the North Fork of Long Island and the businesses that cater to them.

There are no local governments involved in the recreational fish harvesting business, nor do any participate in the sale of marine bait fish or tackle. Therefore, no local governments are affected by these proposed regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The proposed regulations may decrease the income of party and charter businesses and marine bait and tackle shops during the beginning and end of the traditional season because of the loss of 24 days. However, it is hoped that there is increased interest in summer flounder fishing due to the relaxed size and possession limits and that anglers respond with increased activity and spending during the bulk of the season. Related businesses should see the benefits mid-May through late September. Those solely dependent upon black sea bass may see decreased activity and revenue during the 5 days lost in July.

There is no additional technology required for small businesses, and this action does not apply to local governments; there are no economic or technological impacts for either.

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for DEC to maintain compliance with the FMPs for summer flounder and black sea bass while optimizing opportunities for its recreational fishing industry and recreational anglers. Since these regulatory amendments are consistent with the Interstate FMPs, DEC anticipates that New York State will remain in compliance with the FMPs.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail bait and tackle shops and other support industries for recreational fisheries. Failure to comply with FMPs and take required actions to protect our natural resources could cause the collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. These regulations are being proposed in order to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

7. Small business and local government participation:

The department received recommendations from the Marine Resources Advisory Council, which is comprised of representatives from recreational and commercial fishing interests. The proposed regulations are also based upon comments received from recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners, recreational anglers and state law enforcement personnel. There was no special effort to contact local governments because the proposed rule does not affect them.

8. Cure period or other opportunity for ameliorative action:

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

9. Initial review of rule:

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

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The summer flounder, scup, and black sea bass fisheries directly affected by the proposed rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the state. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

The promulgation of this regulation is necessary for the Department of

Environmental Conservation (DEC) to maintain compliance with the Fishery Management Plan for Summer Flounder and Black Sea Bass, and to optimize recreational fishing opportunities available to New Yorkers. The proposed rule reduces the recreational summer flounder minimum size limit by an inch, to 18.0 inches; increases the possession limit by 1 fish, to 5 fish; and removes 16 days from the season in May and 8 days from the season in September. New York is part of a mandatory region with its neighbors, Connecticut and New Jersey, and all member states of a region must have the same minimum size limit, possession limit, and season length. This is part of an effort to provide recreational anglers of all states equitable access to the summer flounder fishery. New York has been at a disadvantage for many years, with the most restrictive harvest rules on the coast. Despite the loss of season, New York is projected to harvest 150 percent of what it would be allowed under more traditional state-by-state Conservation Equivalency.

The proposed rule decreased the length of the recreational season for black sea bass by 5 days to a period from July 15 through December 31. The possession limit of 8 fish and the minimum size limit of 13 inches remains the same.

Many currently licensed party and charter boat owners and operators, as well as bait and tackle businesses, will be affected by these regulations. Relaxation of summer flounder regulations during the open season may have a positive impact upon related businesses, although some business will feel the loss of 24 days of the fishing season. The new black sea bass restrictions may decrease spending in pursuit of this species.

2. Categories and numbers affected:

In 2013, there were 475 licensed party and charter businesses in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York; however, DEC does not have a record of the actual number. According to the American Sportfishing Association, in 2011 New York had an estimated 800,811 marine recreational anglers that spent \$1,194,493,042 on saltwater fishing, generating \$144,539,079 in state and local tax revenue. In 2013, New York anglers took 1.36 million fishing trips targeting summer flounder and black sea bass. The number of trips has decreased from several years ago when regulations were considerably more relaxed. Despite this decrease in activity, marine recreational fishing continues to be a major outdoor activity in New York and a generator of revenue. It is hoped that the relaxed size limit for summer flounder in New York State will increase opportunities and interest in this recreational fishery.

3. Regions of adverse impact:

The slightly more restrictive black sea bass regulations will decrease the number of trips anglers take in pursuit of this species, decreasing the amount of money they spend on bait, tackle, fares and gas. This will have a small negative impact upon those businesses (bait and tackle retail, party and charter operations, gas docks, marinas, etc) that cater to these anglers. The changes made to the summer flounder regulations are mixed. The loss of days from the beginning of the season in May and the end of the season in September will negatively affect businesses, particularly for-hire operations in certain parts of Long Island. It is hoped that the relaxed size limit will encourage anglers to fish for summer flounder during the main part of the season (Memorial Day to Labor Day) with positive economic impacts for bait and tackle retail, marinas, gas docks, etc.

4. Minimizing adverse impact:

The projected harvest for the proposed 2014 regulations is 150 percent of what New York would have been allowed to land under traditional state-by-state Conservation Equivalency. Regional Management allows New York increased access to summer flounder and parity with its neighboring states of Connecticut and New Jersey through shared regulations. The trade-off for this increased access (primarily through a minimum size limit decrease of 1 inch) was loss of 24 days in the season, with 16 of those days occurring in May. This loss of season will have an impact on those businesses that have traditionally enjoyed an early season fluke bite, specifically the North Fork of Long Island. However, the reduced size limit of 18 inches should benefit the majority of participants in the fishery (approximately 85 percent of New York's recreational summer flounder are landed by anglers fishing from private vessels) and the businesses that cater to them will hopefully see the results in increased spending in pursuit of summer flounder. For-hire vessels may see additional fares during the shortened open season due to increased angler enthusiasm. Hopefully, increased effort in pursuit of easier-to-catch-a "keeper" summer flounder during the open season will outweigh the negative impacts of the more restrictive seasons for both summer flounder and black sea bass.

5. Self-employment opportunities:

The party and charter boat businesses, the bait and tackle shops, and marinas are, for the most part, small businesses, owned and usually operated by the owner. The recreational fishing industry is mostly self-employed. This rule will likely have a mixed effect upon opportunities for businesses related to the recreational harvest of summer flounder and a

slight negative effect upon recreational businesses that cater to the black sea bass fishery.

6. Initial review of rule:

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

Department of Financial Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Holding Companies

I.D. No. DFS-19-14-00012-P

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

Proposed Action: Amendment of Subart 80-1 (Regulation 52) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 1504 and 1506

Subject: Holding Companies.

Purpose: To help ensure that acquisitions do not financially harm domestic insurers and are not likely to be hazardous to policyholders.

Substance of proposed rule (Full text is posted at the following State website: www.dfs.ny.gov): Section 80-1.6, "Item 1. Insurer and method of acquisition," is amended to require the applicant to provide the insurer's National Association of Insurance Commissioners company code and to delete the word "brief" before "description of how control is to be acquired."

Section 80-1.6, "Item 2. Identity and background of applicant," "Item 3. Financial Statements," and "Item 6. Interest in the securities of the insurer" are amended to clarify that an applicant must provide certain information with respect to individuals identified pursuant to this section's "Note B".

Section 80-1.6, "Note B" is amended to explicitly add limited partnerships, limited liability partnerships, and limited liability companies to the list of applicants that must provide information to the Superintendent of Financial Services ("Superintendent").

Section 80-1.6, "Item 4. Nature, source and amount of consideration" is amended to provide that if any part of the funds or other consideration used or to be used in effecting the acquisition of control is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, or otherwise effecting the acquisition of control, then the applicant must furnish a description of the transaction, the names of the parties thereto, and copies of all agreements relating thereto, including any offering memoranda, private placement memoranda, any investor disclosure statements, or any other investor solicitation materials.

Section 80-1.6, "Item 5. Objectives in acquisition of control" ("Item 5") is amended to state that an applicant "shall submit" a detailed plan of operations, including five-year financial projections, rather than stating that the Superintendent "may require" the submission of a detailed plan of operations. Item 5 is also amended to require an applicant to describe any plans or proposals that the applicant or any person identified pursuant to "Note B" of this section may have for the next five years to liquidate the insurer, to sell its assets to or merge it with any other persons, to declare any dividends, to change the insurer's investment portfolio, or to make any other change in its business operations or corporate structure. The plans or proposals cannot be modified or amended without the Superintendent's prior written approval.

Item 5 is amended to require an applicant to submit a detailed plan of operations relating to the insurer, and to submit new five-year projections under the plan of operations if, within five years of the date of acquisition of control, the insurer enters into any reinsurance treaty or agreement with, or any transaction investing with, lending to, or for the purchase of assets from, or any transaction encumbering its assets to, or for the benefit of the applicant or any person controlling, controlled by or under common control with the applicant. If the Superintendent determines that the new projections show that the insurer will not have adequate capital, then the insurer must obtain additional capital in an amount and of a quality sufficient to remedy the deficiency as determined by the Superintendent.

Item 5 is amended to provide that, with respect to a life insurer, the Superintendent may require that the applicant, or any holding company

within the insurer's holding company system, establish a trust account that substantially conforms to the requirements of 11 NYCRR 126 (Insurance Regulation 114) in an amount and for a duration to be determined by the Superintendent, if the Superintendent determines that, absent such action, the acquisition is likely to be hazardous or prejudicial to the insurer's policyholders or shareholders.

Section 80-1.6, "Item 9. Material to be filed as exhibits" is amended to require an applicant to file copies of all investor solicitation materials and any operating, management, partnership, or limited partnership agreements with the Superintendent.

Text of proposed rule and any required statements and analyses may be obtained from: Eugene Benger, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2317, email: eugene.benger@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.

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

Regulatory Impact Statement

1. Statutory authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 1504 and 1506.

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

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

Insurance Law Section 1504, among other things, authorizes the Superintendent to obtain information concerning the operations of persons within the holding company system that may materially affect the operations, management or financial condition of the insurer.

Insurance Law Section 1506 prohibits any person, other than an authorized insurer, from acquiring control of any New York domestic insurer unless the person gives notice to the domestic insurer and receives the Superintendent's prior approval.

2. Legislative objectives: Insurance Law Article 15 generally sets forth standards for the regulation of holding company systems, and Insurance Law Section 1506 specifically sets forth standards for the acquisition or retention of control of New York domestic insurers. The Legislature enacted Article 15 in its current form in 1969 as the result of an extensive study conducted by the Superintendent of Insurance. The study found that "[w]hen a non-insurance holding company system includes an insurance company within it, its potential for specific harm becomes greater since tempting reservoirs of liquid assets become accessible to persons without any appreciation of the security needs of the insurance enterprise, and the interests of the policyholders thus become vulnerable." The study also found that "the interests of the controlling persons are potentially in conflict not only with those of the policyholders and the public but with those of any other shareholders of the insurance company."

This amendment accords with the public policy objectives that the Legislature sought to advance by enacting Article 15, including Section 1506, by reducing the possibility that any person seeking to acquire control of a New York domestic insurer has interests that conflict with the interests of policyholders, shareholders, or the public and by minimizing the potential for harm to a domestic insurer.

3. Needs and benefits: In recent years, private equity firms have acquired insurers, particularly life insurers writing fixed and indexed annuity contracts. Private equity-controlled insurers now account for nearly 30 percent of the indexed annuity market (up from seven percent one year ago) and 15 percent of the total fixed annuity market (up from four percent one year ago). These large numbers indicate a rapid growth in market share.

The Department of Financial Services ("Department") is concerned that private equity firms, and other investors with a similar investment horizon, focus on maximizing their short term financial returns rather than ensuring that long-term policyholders receive the insurance benefits for which they have paid. These investors typically manage their investments with a much shorter time horizon (e.g., three to five years) than is typically required for prudent insurer management. They may not be long-term players in the insurance industry, and their short-term focus may result in an incentive to increase investment risk and leverage in order to boost short-term returns.

Private equity firms, which are generally organized as limited liability companies, limited partnerships or limited liability partnerships, often create acquisition vehicles (also in the form of limited liability companies or partnerships) for particular transactions within a short time prior to the

proposed acquisition (typically, within three years). Because such corporate forms were not as common or were not statutorily authorized when the Department first promulgated Insurance Regulation 52, they were not explicitly referenced in the rule. However, the Department considers them to be included in the term “other similar entity” as that term is used in the current rule.

This amended rule advises applicants that the Superintendent may require, among other things, that the applicant, or any holding company within the insurer’s holding company system, to establish a trust account that substantially conforms to the requirements of 11 NYCRR 126 (Insurance Regulation 114), in an amount and for a duration to be determined by the Superintendent, if the Superintendent determines that, absent such action, the acquisition is likely to be hazardous or prejudicial to the insurer’s policyholders or shareholders. Although the amended rule references the establishment of a trust only in connection with an acquisition of a life insurer, the reference to a life insurer is merely to highlight the Department’s recent findings and concerns relating to acquisitions of life insurers. The Superintendent always had, and retains, the discretion to condition an acquisition, in appropriate circumstances as needed, on the fulfillment of additional requirements, including the use of a trust or other financial backstop where a non-life insurer is being acquired. In determining whether to require the establishment of a trust account, the Superintendent may consider, among other things, whether the applicant or any person controlling, controlled by or under common control with the applicant is: (1) registered or required to register with the United States Securities and Exchange Commission pursuant to the Investment Advisers Act of 1940, 15 U.S.C. Section 80b-3, and the regulations promulgated thereunder, 17 C.F.R. Sections 275.204(b) 1, 279.9, or would be required to register pursuant to such provisions if it had \$150 million or more in assets under management; (2) an investment company, pursuant to the Investment Company Act of 1940, 15 U.S.C. Section 80a-3, but without giving effect to the exemptions set forth in 15 U.S.C. Sections 80a-3(c)(1) and (3), for companies with fewer than 100 owners, or where all owners are qualified purchasers as defined in 15 U.S.C. Section 80a-2(a)(51); (3) an entity that was formed within 36 months prior to the date of the application; (4) a company primarily engaging in investing or investment management activities; or (5) an entity that holds for investment purposes a portfolio where non-publicly registered securities or holdings represent 50% or more of the assets of that entity.

The amendment adds new requirements and advises applicants that, in determining whether an acquisition may be harmful to the people of this state, the Superintendent may require additional information or impose certain additional conditions to help ensure that an acquisition does not financially harm a New York domestic insurer and is not likely to be hazardous or prejudicial to the insurer’s policyholders or shareholders.

In addition, the amendment clarifies that the submission to the Superintendent of a detailed plan of operations, including five-year financial projections, is mandatory because in practice, the Superintendent always has required, and applicants always have submitted, a detailed plan of operations, together with financial projections.

The amendment further provides that if, within five years of the date of acquisition of control, the insurer enters into any reinsurance treaty or agreement with, or any transaction for the purchase of assets from, or encumbering its assets to or for the benefit of, the applicant or any person controlling, controlled by or under common control with the applicant, then the insurer must submit new five-year projections under the plan of operations. If the Superintendent determines that the new projections show that the insurer will not have adequate capital, then the insurer must obtain additional capital in an amount and of a quality sufficient to remedy the deficiency as determined by the Superintendent.

4. Costs: This amendment may impose compliance costs on a person, such as a private equity firm, seeking to acquire control of a New York domestic insurer, because it requires the person to file additional information with the Superintendent. Also, compliance costs may increase because the Superintendent may require the person to submit updated financial projections if the domestic insurer enters into certain transactions with the applicant or any person controlling, controlled by or under common control with the applicant, and the establishment of a trust account if the Superintendent determines that, absent such action, the acquisition is likely to be hazardous or prejudicial to the insurer’s policyholders or shareholders. Such costs are difficult to estimate and will vary depending upon a number of factors, including the specific actions required by the Superintendent to be taken, the complexity of the applicant’s organizational structure, and the number of individuals or entities that control other entities within the applicant’s organizational structure for whom the applicant must file certain additional information.

The Department may incur additional costs in connection with the implementation of this amendment, because Department staff will need to review the additional material submitted with applications for acquisition of control. However, because the Department typically does not receive

more than twenty applications per year, any additional costs incurred should be minimal.

This amendment does not impose compliance costs on state or local governments.

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

6. Paperwork: The amendment requires a person, such as a private equity firm, seeking to acquire control of a New York domestic insurer to file certain additional information with the Superintendent as part of its application, such as copies of operating, management, or partnership agreements, and investor solicitation materials. In addition, the Superintendent may require, among other things, updated financial projections if the domestic insurer enters into certain transactions with the applicant or any person controlling, controlled by or under common control with the applicant.

7. Duplication: This amendment will not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: In 2009, the Federal Deposit Insurance Corporation (“FDIC”) issued a “Final Statement of Policy on Qualifications for Failed Bank Acquisitions” (the “Statement”), which provides guidance to private capital investors interested in acquiring or investing in failed insured depository institutions. Although this amendment does not address acquisitions of “failed” insurers, the Department believes that the Statement is an appropriate analog, because the Statement and this amendment seek to address the same concern, namely, acquisitions by persons who may not be long-term players in the industry and whose focus may result in an incentive to boost short-term returns at the expense of the institution’s or insurer’s long-term obligations.

The Department reviewed the Statement and incorporated, with modifications, certain aspects of the Statement into this amendment. For example, the Statement provides that the resulting depository institution must maintain a ratio of Tier 1 common equity to total assets of at least ten percent for a period of three years from the time of acquisition, after which the depository institution must maintain no lower level of capital adequacy than “well capitalized” during the remaining period of ownership by the investors.

This amendment similarly advises an applicant seeking to acquire a domestic insurer that the Superintendent may require that the applicant establish (either directly or through any holding company within the insurer’s holding company system) a financial backstop, in the form of a trust account, to provide financial support for the benefit of the insurer in an amount and for a duration to be determined by the Superintendent. In light of the growth in private equity-controlled insurers, particularly life insurers writing fixed and indexed annuities, and the Department’s concern that private equity firms and other investors with a short-term investment horizon are focused on maximizing short term financial returns, this amendment advises applicants of the criteria that the Superintendent may consider in determining whether the establishment of a trust account is required to ensure that the acquisition is not likely to be hazardous or prejudicial to the insurer’s policyholders or shareholders.

However, certain aspects of the Statement were too restrictive and were not incorporated. For instance, the Statement prohibits an insured depository institution acquired by an investor from extending credit to the investor, its investment funds if any, and any affiliates of the investor or investment funds. This limitation was not incorporated into the amendment, because, under current law, extensions of credit above certain thresholds by the insurer to any person in the insurer’s holding company system are subject to the Superintendent’s prior approval, which provides sufficient protection.

The amendment also does not incorporate the Statement’s requirement that an institution maintain a specific capital level for a period of three years from the time of acquisition by investors. The Department believes that providing flexibility in determining the amount and duration of the trust account will enable the Superintendent to better tailor the trust requirements based on discussions with the applicants and the insurer.

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

10. Compliance schedule: The amendment would be effective upon publication in the State Register and apply to any person seeking to acquire control on or after such date.

Regulatory Flexibility Analysis

Small businesses: This amendment will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that the amendment is directed at a person seeking to acquire control of a New York domestic insurer. Such a person does not fall within the definition of a “small business” as found in State Administrative Procedure Act § 102(8) because a person seeking to acquire control of an insurer, such as a private equity firm, typically is not

independently owned and does not have fewer than 100 employees, but rather typically is controlled by other persons.

Local governments: The amendment does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that the amendment is directed at persons and entities that are not local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Persons seeking to acquire control of insurers, and insurers, affected by this amendment operate in every county in this state, including rural areas as defined in State Administrative Procedure Act (“SAPA”) § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The amendment imposes additional reporting, recordkeeping, and other compliance requirements by requiring a person, including a person in a rural area, who is seeking to acquire control of a New York domestic insurer to file certain additional information with the Superintendent of Financial Services (“Superintendent”) as part of its application, such as copies of operating, management or partnership agreements and investor solicitation materials. In addition, the Superintendent may require, among other things, updated financial projections if the domestic insurer enters into certain transactions with the applicant or any person controlling, controlled by or under common control with the applicant.

It is unlikely that a person in a rural area seeking to acquire control of an insurer would need professional services to comply with this amendment beyond the professional services the person already would be using.

3. Costs: The amendment may result in additional costs to any person, including a person in a rural area, seeking to acquire control of a New York domestic insurer, because it requires the person to file additional information with the Superintendent. Also, compliance costs may increase because this amendment advises applicants that the Superintendent may require persons who control New York domestic insurers to provide updated financial projections and/or establish a trust account. Such costs are difficult to estimate and will vary depending upon a number of factors, including the complexity of an applicant’s organizational structure and the number of individuals or entities that control other entities within the applicant’s organizational structure for whom the applicant must file certain additional information. However, any additional costs to applicants or insurers in rural areas should be the same as for applicants or insurers in non-rural areas, and the costs should not differ between public and private entities in rural areas.

4. Minimizing adverse impact: The amendment should not have an adverse impact on rural areas. The amendment affects uniformly applicants and insurers who are located in both rural and non-rural areas of New York State and seeks to protect the interests of policyholders, shareholders and the public, including those located in rural areas.

5. Rural area participation: Public and private interests in rural areas will have an opportunity to participate in the rule making process once the proposed rule is published in the State Register and posted on the website of the Department of Financial Services.

Job Impact Statement

The amendment to this rule should not adversely impact jobs or employment opportunities in New York State. It is likely to have no impact whatsoever, since the amendment advises applicants that the Superintendent of Financial Services requires the submission of certain information to ensure that anyone seeking to acquire control of a New York domestic insurer does not have interests that conflict with the interests of policyholders, shareholders, or the public and that any potential for specific harm to a domestic insurer is minimized.

New York State Joint Commission on Public Ethics

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

Public Service Announcement Regulations

I.D. No. JPE-19-14-00001-P

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

Proposed Action: Addition of Part 940 to Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(c) and (d-1); Legislative Law, art. 1-A; Public Officers Law, sections 73(5) and 74

Subject: Public service announcement regulations.

Purpose: To adopt regulations defining the permissible use of, and promoting the proper use of, public service announcements.

Text of proposed rule: CHAPTER XX. JOINT COMMISSION ON PUBLIC ETHICS

PART 940 PUBLIC SERVICE ANNOUNCEMENTS: PERMISSIBLE AND PROPER USAGE

940.1 Purpose.

Pursuant to Executive Law § 94(9)(d-1), the Joint Commission on Public Ethics shall adopt, amend, and rescind rules and regulations “defining the permissible use of and promoting the proper use of public service announcements.” The purpose of these regulations is to: (a) provide guidance as to what constitutes, for the purposes of the Public Officers Law, a public service announcement; (b) clarify that an appearance in a public service announcement does not ordinarily constitute a “gift” under Public Officers Law § 73(5), Legislative Law Article 1-A, Title 19 NYCRR Part 933, and Title 19 NYCRR Part 934; and (c) place limitations on when certain individuals – referred to as “Covered Officials” – who are also Candidates may appear in public service announcements.

Public service announcements in which no Covered Official appears, is named, or is otherwise identified or referenced are not covered by these regulations.

940.2 Definitions.

(a) *Appear* shall mean to appear (by likeness, picture, or voice), be named, or otherwise identified or referenced.

(b) *Candidate* shall have the same meaning as that term is defined in New York Election Law § 14-100.

(c) *Covered Official* shall mean an individual who holds any one of the following positions or offices: Governor, Lieutenant Governor, Comptroller, or Attorney General of the State of New York; any Member of the New York State Legislature; or any head and/or executive director of a State Agency.

(d) *Party* shall have the same meaning as that term is defined in New York Election Law § 1-104(3).

(e) *Party Committee* shall have the same meaning as that term is defined in New York Election Law § 14-100.

(f) *Publish* shall mean publication, dissemination, broadcast, or on-line posting through any print or electronic media, including television, radio, and the Internet.

(g) *State Agency* shall mean any civil department; State department; any public benefit corporation, public authority, or commission at least one of whose members is appointed by the Governor. State Agency shall also include the State University of New York or the City University of New York, including all their constituent units except (1) community colleges of the State University of New York and (2) the independent institutions operating statutory or contract colleges on behalf of the State.

940.3 Public Service Announcements.

(a) A Public Service Announcement is a communication that meets all of the following criteria:

(1) The communication (i) is designed to promote programs, activities, or services of nonprofit organizations or federal, state or local governments; or (ii) imparts information generally regarded as serving the public interest;

(2) The communication is sponsored or paid for by a person or an organization with a mission or history that includes providing outreach and public service announcements to the community;

(3) The communication is subject to the public service announcement policies, if any, of the entity publishing the communication;

(4) The communication does not advertise a commercial product or service;

(5) The communication is not paid for or controlled by a Covered Official who is a Candidate and who Appears in the communication, or his or her Party or Party Committee, or any organization affiliated with the Covered Official or his or her Party or Party Committee;

(6) The communication does not constitute “lobbying” or “lobbying activities,” as those terms are defined in Legislative Law Article 1-A;

(7) The communication (i) does not promote or support a Covered Official who is a Candidate or criticize or oppose an individual running against such Covered Official and (ii) could not reasonably be interpreted to be an appeal to vote for such Covered Official or to vote against an individual running opposed to such Covered Official; and

(8) The communication is of primary interest to the general public or a segment of the general public.

(b) Examples of Public Service Announcements include, but are not limited to, communications regarding nonprofit or governmental outreach or awareness activities such as: breast cancer screening; heart disease prevention; domestic violence awareness and prevention; energy conser-

vation; organ donation; emergency or other disaster relief; programs designed to encourage reading; job training and job fairs; and fund drives for charitable activities.

(c) The following is a non-exhaustive list of communications that are not regulated or otherwise restricted by this Part:

(1) News, Editorials, or Opinions in which a Covered Official Appears that are Published in a News Medium that is not controlled by the Covered Official or his or her Party or Party Committee:

(i) "News Medium" means an entity that regularly Publishes news to either the public-at-large or to subscribers.

(ii) "News" means information that is about current events or that would be of current interest to the public and that, through the use of editorial skills, is turned into a distinct work that is Published to an audience.

(iii) "Editorial" means a communication that provides an opinion of the news medium that is Publishing the communication.

(iv) "Opinion" means a communication, including but not limited to, a column, a letter to the editor, or blog or comment on a blog, expressing a viewpoint and is authored by an individual or entity other than the news medium that is Publishing the communication.

(2) State Agency websites; official websites of, and communications from, Members of the New York State Legislature;

(3) A Covered Official's personal communications, including but not limited to, letters, emails, and postings on social media pages.

940.4 Public Service Announcements Excluded as Gifts Under Parts 933 and 934.

Notwithstanding any provision of Public Officers Law § 73(5), Legislative Law Article 1-A, Part 933, and Part 934, a Public Service Announcement does not constitute a "gift" as that term is defined or otherwise used in Public Officers Law § 73(5), Legislative Law Article 1-A, Part 933, and Part 934.

940.5 Appearance By a Covered Official in a Public Service Announcement in the Ninety Days Prior to an Election.

(a) Notwithstanding any other provision of this Part, a determination made pursuant to the provisions of Executive Law § 94(13), (14) that a Covered Official knowingly and intentionally Appeared in a Public Service Announcement that, with the knowledge that such Public Service Announcement would be Published in the ninety calendar days prior to any election in which the Covered Official was a Candidate, shall be a violation of Public Officers Law § 74(3)(d), in addition to any other applicable provisions, and subject the Covered Official to the penalties contained therein.

(b) An Appearance as described in Part 940.5(a) shall not be a violation of Public Officers Law § 74 when the Appearance occurs during a declared state of emergency where the Public Service Announcement relates to such emergency.

Text of proposed rule and any required statements and analyses may be obtained from: Joanna Weiss, Associate Counsel, Joint Commission on Public Ethics, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: Joanna.Weiss@jcope.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: Executive Law § 94(9)(d-1) directs the Joint Commission on Public Ethics ("JCOPE") to promulgate regulations relating to public service announcements, and section 94(9)(c) authorizes JCOPE to adopt, amend, and rescind rules and regulations to govern JCOPE procedures. Public Officers Law § 73(5) establishes the restrictions on soliciting, accepting or receiving gifts that apply to certain individuals affiliated with the State, including Statewide elected officials, State officers, employees, members of the Legislature, and Legislative employees. (Public Officers Law § 73(5) utilizes the definition of "Gift" in Legislative Law Article 1-A, § 1-c(j).) Public Officers Law § 74 contains the Code of Ethics by which all State officers and employees must abide.

2. Legislative objectives: Currently, New York State does not provide specific guidance to State employees and Legislative Members and employees who appear in public service announcements. By clarifying the circumstances in which a State employee or officer's appearance in a public service announcement is appropriate, the regulations promote the proper use of these announcements.

3. Needs and benefits: The proposed rulemaking is necessary to regulate and clarify that, ordinarily, the appearance of a State officer or employee or Legislative Member or employee in a Public Service Announcement (as that term is defined in the regulations) does not constitute a "Gift" to that individual under the Public Officers Law, the Legislative Law, or 19 NYCRR Parts 933 and 934. The regulations also provide that the appearance in a Public Service Announcement by a Member of the Legislature or

certain State officers and employees who are candidates for State public office may, in certain circumstances, constitute a violation of Public Officers Law § 74. Thus, the regulations promote Public Service Announcements, while discouraging their use as campaign tools for elective office. The regulations provide clear guidance to questions about what constitutes a Public Service Announcement, who is covered by these regulations, and what requirements apply to these individuals in connection with their appearance in Public Service Announcements.

Part 940.1 provides the purpose and effect of the regulations.

Part 940.2 defines key terms in the regulations. In particular Part 940.2(c) defines a "Covered Official" as an individual who holds any one of the following positions or offices: Governor, Lieutenant Governor, Comptroller, or Attorney General of the State of New York; any elected member of the New York State Legislature; or any head and/or executive director of a State Agency. Part 940.2(b) defines "Candidate" according to New York Election Law § 14-100. Part 940.2(a) defines "Appear" to mean to "appear (by likeness, picture, or voice), be named, or otherwise identified or referenced."

Part 940.3 defines a Public Service Announcement as a communication that meets all of the criteria listed therein. Among the criteria are following:

- The communication (i) is designed to promote programs, activities or services of nonprofit organizations or federal, state or local governments or (ii) imparts information generally regarded as serving the public interest;

- The communication is not paid for or controlled by (i) a Covered Official who is a Candidate and who appears in the communication, or (ii) his or her party or party committee, or any organization affiliated with the covered official or his or her party or party committee;

- The communication does not constitute "lobbying" or "lobbying activities," as those terms are defined in Legislative Law Article 1-A; and

- The communication (i) does not promote or support a Covered Official who is a Candidate or criticize or oppose an individual running against such Covered Official and (ii) could not reasonably be interpreted to be an appeal to vote for such Covered Official or to vote against an individual running opposed to such Covered Official.

Part 940.3(b) provides a non-exhaustive list of examples of Public Service Announcements, which include communications regarding nonprofit or governmental outreach or awareness activities on such topics as energy conservation, emergency or other disaster relief, or job training and job fairs.

Part 940.3(c) provides a non-exhaustive list of communications that are not regulated or restricted under the regulations. This list includes: news, editorials, and opinions that are published by an entity that regularly publishes news to the public or to subscribers and is not controlled by the Covered Official appearing in the story or the Covered Official's political party; State agency and legislative web sites; communications from Members of the Legislature officials; and personal communications from Covered Officials.

Part 940.4 clarifies that a Public Service Announcement is not considered a gift, as that term is defined in Public Officers Law § 73(5), Legislative Law Article 1-A, or 19 NYCRR Parts 933 or Part 934.

Part 940.5(a) provides that knowingly and intentional appearance by a Covered Official in a Public Service announcement within the ninety days prior to an election in which the Covered official is a Candidate may a violation of Public Officers Law § 74(3)(d), as well as any other applicable provision, and would subject the covered official to the penalties contained therein.

Part 940.5(b) provides that during a state of emergency, an appearance by a Covered Official in a Public Service Announcement during the ninety days prior to an election would not be considered a violation of the Public Officers Law, as long as the Public Service Announcement relates to the emergency.

4. Costs:

a. costs to regulated parties for implementation and compliance: Minimal.

b. costs to the agency, state and local government: Minimal costs to state and local governments. Minimal administrative costs to the agency during the implementation phase.

c. cost information is based on the fact that there will be minimal costs to regulated parties and state and local government for training staff on changes to the requirements. The cost to the agency is based on an estimated slight increase in staff resources to implement the regulations.

5. Local government mandate: The proposed regulation imposes, at most, minimal new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district, as they must make themselves aware of any requirements from the regulation that would apply to Public Service Announcements they would like to create and disseminate.

6. Paperwork: This regulation may require the preparation of additional forms or paperwork. Such additional paperwork is expected to be minimal.

7. Duplication: This regulation does not duplicate any existing federal, state or local regulations.

8. Alternatives: JCOPE could promulgate a formal advisory opinion or other guidance, but the formal rulemaking process provides more clarity to affected parties.

9. Federal standards: These regulations do not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: Compliance will take effect upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice of Proposed Rulemaking because the proposed rulemaking will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, record-keeping or other affirmative acts on the part of these entities for compliance purposes. The New York State Joint Commission on Public Ethics notes that while the public service announcement regulations may, indirectly, affect when certain state employees and officers can appear in public service announcements on behalf of local governments or sponsored by small businesses, this does not impose extensive record-keeping requirements or other adverse economic impacts on these entities.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice of Proposed Rule Making since the proposed rule making will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, record-keeping or other affirmative acts on the part of rural areas. The Joint Commission on Public Ethics makes these findings based on the fact that the public service announcement regulations define what constitutes a public service announcement and sets forth the limitations on when certain state employees and officers who are also candidates for public office can appear in public service announcements. Rural areas are not affected in any way.

Job Impact Statement

A Job Impact Statement is not submitted with this Notice of Proposed Rule Making because the proposed rulemaking will have no impact on jobs or employment opportunities. The Joint Commission on Public Ethics makes this finding based on the fact that the public service announcement regulations define what constitutes a public service announcement and sets forth the limitations on when certain state employees and officers who are also candidates for public office can appear in public service announcements. This regulation does not apply nor relate to economic development or employment opportunities.

Office of Mental Health

EMERGENCY RULE MAKING

Prevention of Influenza Transmission

I.D. No. OMH-08-14-00014-E

Filing No. 330

Filing Date: 2014-04-28

Effective Date: 2014-04-28

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

Action taken: Addition of Part 509 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07, 7.09 and 31.04

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services in OMH-operated psychiatric centers and freestanding psychiatric hospitals licensed under Article 31 of the Mental Hygiene Law.

Influenza is an unpredictable disease that can cause serious illnesses, death, and healthcare disruption during any given year. Recent influenza seasons in New York State have been worse than those experienced a decade ago. In response to this increased public health threat, New York must take active steps to prevent and control transmission of seasonal influenza. The seriousness of the continuing influenza threat and the fail-

ure of the health care system to achieve acceptable vaccination rates through voluntary programs necessitate further action.

Although masks are not as effective as vaccination, evidence indicates that wearing a surgical or procedure mask will lessen transmission of influenza from patients experiencing respiratory symptoms. It is also known that persons incubating influenza may shed the influenza virus before they have noticeable symptoms of influenza. The Centers for Disease Control and Prevention (CDC) recommends that patients who may have an infectious respiratory illness wear a mask when not in isolation and that healthcare personnel wear a mask when in close contact with symptomatic patients. Further, the Infectious Disease Society of America recommends that healthcare personnel who are not vaccinated for influenza wear masks. Recently, the New York State Department of Health adopted regulations at 10 NYCRR Section 2.59 to require all unvaccinated personnel in certain health settings to wear surgical or procedure masks during the time when the Commissioner of Health determines that influenza is prevalent.

It is critical for the Office of Mental Health to join in a statewide effort to reduce the morbidity and mortality of influenza, by combining efforts and pursuing a common path of prevention and intervention. Therefore, OMH is adopting on an emergency basis this rule to require that, during the influenza season, all OMH-operated psychiatric centers (including all programs and services operated by, or under the auspices of such psychiatric centers) and “free standing” Article 31 psychiatric hospitals shall ensure that all personnel who have not been vaccinated against influenza for the current influenza season wear a surgical or procedure mask while in areas where patients may be present. Facilities shall supply such masks to personnel, free of charge.

For the health and safety of patients in OMH-operated psychiatric hospitals and Article 31 licensed freestanding psychiatric facilities, this rule is being adopted on an emergency basis until such time as it has been formally adopted through the SAPA rule promulgation process.

Subject: Prevention of Influenza Transmission.

Purpose: Require unvaccinated personnel to wear surgical masks in certain OMH-licensed or operated psychiatric centers during flu season.

Text of emergency rule: A new Part 509 is added to Title 14 NCYRR as follows:

PART 509

PREVENTION OF INFLUENZA TRANSMISSION

§ 509.1 Background and Intent.

(a) *Influenza is an unpredictable disease that can cause serious illnesses, death, and healthcare disruption during any given year. Recent influenza seasons in New York State have been worse than those experienced a decade ago.*

(b) *In response to this increased public health threat, New York must take active steps to prevent and control transmission of seasonal influenza. The seriousness of the continuing influenza threat and the failure of the health care system to achieve acceptable vaccination rates through voluntary programs necessitate further action.*

(c) *Although masks are not as effective as vaccination, evidence indicates that wearing a surgical or procedure mask will lessen transmission of influenza from patients experiencing respiratory symptoms. It is also known that persons incubating influenza may shed the influenza virus before they have noticeable symptoms of influenza. The Centers for Disease Control and Prevention (CDC) recommends that patients who may have an infectious respiratory illness wear a mask when not in isolation and that healthcare personnel wear a mask when in close contact with symptomatic patients. Further, the Infectious Disease Society of America recommends that healthcare personnel who are not vaccinated for influenza wear masks.*

(d) *Recently, the New York State Department of Health (DOH) adopted regulations at 10 NYCRR Section 2.59 to require all unvaccinated personnel in certain health settings to wear surgical or procedure masks during the time when the Commissioner of Health determines that influenza is prevalent. Specifically, the DOH regulations apply to general hospitals, nursing homes, diagnostic and treatment centers, certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, limited licensed home care service agencies and hospices (licensed by DOH under Public Health Law, Articles 28, 36 and 40).*

(e) *It is critical for the Office of Mental Health to join in a statewide effort to reduce the morbidity and mortality of influenza, by combining efforts and pursuing a common path of prevention and intervention.*

§ 509.2 Legal Base.

(a) *Section 7.07 of the Mental Hygiene Law charges the Office of Mental Health with the responsibility for seeing that persons with mental illness are provided with care and treatment, and that such care, treatment and rehabilitation is of high quality and effectiveness.*

(b) *Section 7.09 of the Mental Hygiene Law gives the Commissioner of*

the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

(c) Section 31.04 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations to effectuate the provisions and purposes of article 31 of such law, including procedures for the issuance and amendment of operating certificates, and for setting standards of quality and adequacy of facilities.

§ 509.3 Definitions. For the purposes of this Part:

(a) Facility shall mean:

(1) a psychiatric center established pursuant to Section 7.17 of the Mental Hygiene Law; including all programs or services operated by, or under the auspices of, such psychiatric center;

(2) a hospital operated pursuant to Part 582 of this Title.

(b) Influenza season shall mean the period of time during which influenza is prevalent as determined by the Commissioner of Health.

(c) Personnel shall mean all persons employed or affiliated with a facility, as defined in this Section, whether paid or unpaid, including but not limited to employees, members of the medical, nursing, and other treatment staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with influenza, they could potentially expose patients to the disease.

§ 509.4 Documentation Requirements.

(a) All facilities shall determine and document which persons qualify as "personnel" under this Part.

(b) All facilities shall document the influenza vaccination status of all personnel for the current influenza season in a secure file separate from their personnel history folder. Documentation of vaccination must include the name and address of the individual who ordered or administered the vaccine and the date of vaccination.

(c) During the influenza season, all facilities shall ensure that all personnel who have not been vaccinated against influenza for the current influenza season wear a surgical or procedure mask while in areas where patients may be present. Facilities shall supply such masks to personnel, free of charge.

(d) Upon the request of the Office, a facility must report the number and percentage of personnel that have been vaccinated against influenza for the current influenza season.

(e) All facilities shall develop and implement a policy and procedure to ensure compliance with the provisions of this Part. The policy and procedure shall include, but is not limited to, the identification of those areas where unvaccinated personnel must wear a mask pursuant to subdivision (c) of this Section.

(f) For those facilities that are required to comply with 10 NYCRR Section 2.59, compliance with such Section shall be deemed compliance with this Part.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. OMH-08-14-00014-P, Issue of February 26, 2014. The emergency rule will expire June 26, 2014.

Text of rule and any required statements and analyses may be obtained from: Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Sue.Watson@omh.ny.gov

Regulatory Impact Statement

1. Statutory authority: Section 7.07 of the Mental Hygiene Law charges the Office of Mental Health with the responsibility for seeing that persons with mental illness are provided with care and treatment, and that such care, treatment and rehabilitation is of high quality and effectiveness.

Section 7.09 of the Mental Hygiene Law gives the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 31.04 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations to effectuate the provisions and purposes of article 31 of such law, including procedures for the issuance and amendment of operating certificates, and for setting standards of quality and adequacy of facilities.

2. Legislative objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs and charges OMH with the responsibility for ensuring that persons with mental illness receive high quality care and treatment. The proposed rule creates a new 14 NYCRR Part 509 to establish provisions designed to reduce the transmission of the influenza virus in inpatient psychiatric facilities operated or licensed by OMH. This rule furthers the legislative policy of providing high quality services to individuals with mental illness in a safe and secure environment.

3. Needs and benefits: Influenza is an unpredictable disease that can cause serious illnesses, death, and healthcare disruption during any given

year. Recent influenza seasons in New York State were worse than experienced in a decade, and serve as a reminder that influenza could have this devastating effect in any year. In response to this increased public health threat, New York must take active steps to prevent and control transmission of seasonal influenza. The seriousness of the continuing influenza threat and the failure of the health care system to achieve acceptable vaccination rates through voluntary programs necessitate further action.

The new 14 NYCRR Part 509 establishes provisions whereby all OMH-operated psychiatric centers (including all programs and services operated by, or under the auspices of such psychiatric centers) and Article 31 "free standing" psychiatric hospitals shall ensure that, during the influenza season, all personnel who have not been vaccinated against influenza for the current influenza season wear a surgical or procedure mask while in areas where patients may be present. Such masks shall be provided free of charge to personnel. Although masks are not as effective as vaccination, evidence indicates that wearing a surgical or procedure mask will lessen transmission of influenza from patients experiencing respiratory symptoms. It is also known that persons incubating influenza may shed the influenza virus before they have noticeable symptoms of influenza. The Centers for Disease Control and Prevention (CDC) recommends that patients who may have an infectious respiratory illness wear a mask when not in isolation and that healthcare personnel wear a mask when in close contact with symptomatic patients. Further, the Infectious Disease Society of America recommends that healthcare personnel who are not vaccinated for influenza wear masks.

Recently, the New York State Department of Health adopted regulations at 10 NYCRR Section 2.59 to require all unvaccinated personnel in certain health settings to wear surgical or procedure masks during the time when the Commissioner of Health determines that influenza is prevalent. Specifically, the DOH regulations apply to general hospitals, nursing homes, diagnostic and treatment centers, certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, limited licensed home care service agencies and hospices (licensed by DOH under Public Health Law, Articles 28, 36 and 40).

It is critical for the Office of Mental Health to join in a statewide effort to reduce the morbidity and mortality of influenza, by combining efforts and pursuing a common path of prevention and intervention. On December 2, 2013, the Office of Mental Health issued an influenza health alert for all OMH-operated psychiatric centers and "free standing" licensed Article 31 psychiatric hospitals.

4. (a) Costs to local government: These regulatory amendments will not result in any additional costs to local government.

(b) Costs to state and regulated parties: Although it is impossible to quantify the exact cost of providing surgical or procedure masks for those personnel who have not been vaccinated, it is anticipated that this cost will not be significant. The Department of Health estimates that on average, the price of a surgical or procedure mask varies between approximately 10 to 25 cents per mask, subject to the quantity ordered. This is a modest investment to protect the health and safety of patients and personnel, especially when compared to both the direct medical costs and indirect costs of personnel absenteeism, including personnel working less effectively or being unable to work. Therefore, the minimal cost of surgical or procedure masks is expected to be offset by the savings reflected in a reduction of influenza in personnel and the loss of productivity and available staff.

5. Local government mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts, except to the extent that the local governmental unit is a provider of services.

6. Paperwork: This rule will result in a minor increase in the paperwork requirements of all facilities covered by the regulation as they will have to determine and document which persons qualify as personnel under the new Part 509. Facilities must document the influenza vaccination status of all personnel for the current influenza season in a secure file separate from an individual's personnel history folder. Upon request of OMH, facilities must report the number and percentage of personnel that have been vaccinated against influenza for the current influenza season. Facilities must develop and implement a policy and procedure to ensure compliance with the provisions of this Part.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements. In instances where an inpatient program is required to comply with the Department of Health regulations found in 10 NYCRR Section 2.59, compliance with that section shall be deemed compliance with this Part.

8. Alternatives: One alternative to requiring a surgical or procedure mask for unvaccinated personnel would be to require all personnel to be vaccinated for influenza. While OMH strongly encourages all personnel to be vaccinated, requiring unvaccinated staff to wear a surgical or procedure mask is the most effective and least burdensome way to immediately

reduce the potential for transmission of influenza at this time. The only other alternative that was considered was inaction, but because of the seriousness of the influenza threat and the failure of the health care system to achieve acceptable vaccination rates through voluntary programs, that alternative was necessarily rejected.

9. Federal standards: The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: These regulatory amendments will be effective immediately upon adoption.

Regulatory Flexibility Analysis

The provisions of the new 14 NYCRR Part 509 apply to OMH-operated psychiatric centers (including all programs and services operated by, or under the auspices of such psychiatric centers) and “free standing” psychiatric hospitals licensed under Article 31 of the Mental Hygiene Law. All of these hospitals employ more than 100 people; therefore, none of them qualify as a small business. The proposed rule creating a new 14 NYCRR Part 509 establishes provisions designed to reduce the transmission of the influenza virus by ensuring that, during the influenza season, all personnel who have not been vaccinated against influenza for the current influenza season wear a surgical or procedure mask while in areas where patients may be present. Costs to regulated parties are expected to be minimal and offset by the savings reflected in the reduction of influenza in personnel. As there will be no adverse economic impact on small business or local governments, a Regulatory Flexibility Analysis for Small Business and Local Governments has not been submitted with this notice.

Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: In New York State, 43 counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The rule establishes provisions designed to reduce the transmission of the influenza virus in OMH-operated psychiatric centers (including all programs and services operated by, or under the auspices of such psychiatric centers) and “free standing” Article 31 psychiatric hospitals by ensuring that, during the influenza season, all personnel who have not been vaccinated against influenza for the current influenza season wear a surgical or procedure mask while in areas where patients may be present. Costs to regulated parties are expected to be minimal and offset by the savings reflected in the reduction of influenza in personnel. The geographic location of any given program (urban or rural) will not be a contributing factor to any additional costs to providers.

2. Reporting, recordkeeping and other compliance requirements and professional services: All facilities covered by the regulation will have to determine and document which persons qualify as personnel under the new Part 509. In addition, facilities must document the influenza vaccination status of all personnel for the current influenza season in a secure file separate from their personnel history folder. At the request of OMH, facilities must report the number and percentage of personnel that have been vaccinated against influenza for the current flu season. Facilities must develop and implement a policy and procedure to ensure compliance with the provisions of this Part. No additional professional services are required as a result of this regulation.

3. Compliance costs: There will be modest costs to providers, regardless of their geographic location, as a result of this regulation. The exact costs, while impossible to quantify, are not expected to be significant. The Department of Health has estimated that on average, the price of a surgical or procedure mask varies between approximately 10 to 25 cents per mask, subject to the quantity ordered. These costs are expected to be offset by the savings reflected in the reduction of influenza in personnel and the loss of productivity and available staff.

5. Minimizing adverse impact: The regulations could have required all personnel be vaccinated for influenza; however, OMH believes it to be less burdensome to require the use of surgical or procedure masks for personnel who have not been vaccinated. The requirement to wear a surgical mask does not impose any physical limitations on the individual wearing the mask, as it would if the regulation required the use of a respirator, which would provide a higher level of protection. In addition, the requirement that personnel who have not been vaccinated wear a mask is only in effect during influenza season as determined by the Commissioner of Health.

6. Participation of public and private interests in rural areas: OMH has released a health advisory notifying OMH-operated psychiatric centers and free standing Article 31 psychiatric hospitals that the agency is promulgating a regulation establishing provisions designed to reduce the transmission of the influenza virus. The health advisory was shared with union representatives. In accordance with statutory requirements, the rule was presented to the Behavioral Health Services Advisory Council for review and recommendation at their meeting on December 13, 2013. The Council voted to approve the proposal.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted with this rule making. The new 14 NYCRR Part 509 is being created to establish provisions designed to reduce the transmission of the influenza virus in OMH-operated psychiatric centers (including all programs and services operated by, or under the auspices of such psychiatric centers) and “free standing” Article 31 psychiatric hospitals. It is apparent from the nature and purpose of the rule that it will not have an impact on jobs and employment opportunities.

Assessment of Public Comment

In response to the proposed rule creating a new 14 NYCRR Part 509, Prevention of Influenza Transmission, the agency received three letters of comment. Two were from public employees’ unions, and the third was from a private individual. The comments have been consolidated into common themes and are addressed below:

Comment: While the use of surgical masks may provide some protection from influenza when worn by a person experiencing respiratory symptoms or by a person as protection against an unmasked person experiencing respiratory symptoms there is insufficient scientific evidence to support the use of masks by healthcare personnel who are not experiencing symptoms. Influenza is primarily spread through respiratory droplets released into the air when an infected person sneezes or coughs. No public health organization recommends masks be worn.

Response: Although a study directly addressing the efficacy of masks to prevent transmission by healthcare personnel has not been done, OMH has relied upon a Department of Health (DOH) analysis of related evidence, which drew reasonable inferences to formulate its policy, upon which the OMH regulations are based. In the absence of vaccination, requiring staff who are in close proximity to patients to wear a protective mask is an effective way to prevent influenza transmission, in addition to other routine measures already in place, such as handwashing. “Selective” mask wear, (i.e., only requiring mask wear by those healthcare personnel who are diagnosed with influenza), would thus not prevent transmission.

As noted by DOH, the Centers for Disease Control and Prevention (CDC) recommends use of masks by potentially infectious persons to help contain respiratory secretions. This principle would apply to unvaccinated healthcare personnel who are infected with influenza and potentially contagious but not yet symptomatic, as well as those healthcare personnel who are working while being infected with a mild case that is not recognized as influenza. DOH has noted that the Infectious Diseases Society of America also recommends that unvaccinated healthcare personnel wear masks.

Comment: The flu vaccine is not sufficiently effective to warrant mandatory imposition.

Response: The regulation does not require mandatory vaccination. Regardless, the Center for Disease Control and Prevention (CDC) mid-season vaccination effectiveness (VE) estimates were published on February 20, 2014 in a Morbidity and Mortality Weekly Report entitled “Interim Estimates of 2013-14 Seasonal Influenza Vaccine Effectiveness – United States.” The mid-season estimate of VE was 61% for all age groups (95% confidence interval: 5% to 68%) against having to go to the doctor because of flu illness. This VE estimate means that getting a flu vaccine this season reduced the vaccinated population’s risk of having to go to the doctor because of the flu by 60% for both children and adults. At the end of the season, CDC will provide a comprehensive estimate of VE that takes into account all of the data collected during the season. Effectiveness against the flu A “2009 H1N1” virus, which is currently the most common flu virus spreading and causing illness in the United States this season, was 62% (95% CI: 53% to 71%) for children and adults. During the study period (Dec 2, 2013 – January 23, 2014), the 2009 H1N1 virus accounted for 98% of flu viruses detected. (Note: There were not enough influenza B or influenza A (H3N2) viruses detected during the study period to make a mid-season estimate of vaccine effectiveness against either of those viruses.)

Comment: The regulation is selectively applied, in that it does not require the use of masks by symptomatic visitors, patients, or attorneys (such as Mental Hygiene Legal Services – “MHLS”) who could be more likely to transmit respiratory droplets containing influenza than asymptomatic health care personnel.

Response: While infected visitors, patients, contractors, or others may

spread influenza, there are several measures personnel can take to reduce transmission by these groups, e.g., develop visitor policies to encourage symptomatic visitors to refrain from visiting until they are feeling better, establishing strict housekeeping measures, and other administrative controls. With respect to visitors and MHLS, patients in OMH care have the statutory right to receive visitors and to contact MHLS, so it is essential to balance these important individual patient rights against the need to prevent the spread of influenza throughout the patient population. The regulation does, in fact, apply to contract staff, as well as to students and volunteers who have direct contact with patients. Those contractors that are not retained for the purpose of having direct contact with patients are unlikely to be in areas where patients are present; as a result, there is a significantly diminished risk that contractors will spread influenza to patients in OMH facilities. Healthcare personnel, who typically move from patient to patient and therefore have more opportunity to infect multiple patients, are the focus of this regulation.

Comment: The use of surgical masks may increase the rate of respiratory illness because of the potential for contaminated masks. The use of masks is hazardous because the proposed regulation does not require the use of gloves and hand-washing before and after mask and glove removal, consistent with the Centers for Disease Control and Prevention guidelines regarding mask use.

Response: OMH has issued an advisory, posted on its public website, recommending routine infection control procedures such as hand hygiene.

Comment: The regulation puts healthcare personnel in the position of having to choose between near-constant mask use or submitting to vaccination against their will.

Response: The regulation is designed to give healthcare personnel a choice in how they protect patients from influenza – either vaccination or mask wear. While neither is perfect, both are expected to provide some level of protection for patients. The requirement that unvaccinated employees wear masks is to protect the health and safety of our patients, not to force vaccination on OMH employees.

Comment: Patient care and the ability of healthcare personnel to perform their duties will be negatively impacted. Masks can be frightening to patients and stigmatizing to personnel. Patient communication could be negatively impacted as patients may have difficulty hearing and understanding healthcare personnel wearing masks. The worker wearing a mask may experience difficulty breathing, irritated skin, fogged glasses, and inability to smile and reassure patients. Mask wearing interferes with the ability of staff to be role models for patients, could result in them being regarded with mistrust, and create blind spots in the wearer's vision.

Response: While communication barriers, violence, or other negative reactions need to be considered, the benefit of the spread of a potentially deadly virus by wearing a surgical mask outweighs any minimal loss of one's ability to communicate because of the mask. In OMH's assessment, a surgical mask does not muffle one's voice to such an extent that verbal communication is significantly impeded, and any such impediment could likely be resolved with minimal voice modulation. Healthcare personnel can themselves minimize any adverse effect by improving their interactions, communications and relationships with patients if they inform patients that they are wearing masks out of concern for patient health, safety, and well-being. In that respect, wearing a mask to prevent the transmission of influenza to patients is actually behavior worthy of emulation, as staff who do so are demonstrating concern and consideration for the health and safety of patients. OMH is not aware of any empirical or anecdotal evidence suggesting patients view personnel wearing masks to prevent the transmission of influenza with suspicion or mistrust. With respect to fogged glasses as a result of mask wear, there are several solutions persons who experience this effect could consider, e.g., using fog-free spray, tightening/taping the top of the mask, loosening the bottom of the mask, or wearing the mask closer to the tip of the nose. Finally, clinicians in operating rooms, who wear surgical masks at all times, require their full range of vision in order to perform surgery. A surgical mask neither covers any part of the eyes nor impedes peripheral vision of the individual wearing it.

Comment: Examples were presented of healthcare workers who believe the wearing of masks created a stigma, was regarded as punishment for not getting vaccinated, and was seen as damaging to the patient/healthcare provider relationship.

Response: The examples presented did not include experiences in OMH operated or licensed settings; thus, this comment appears to be based more in speculation than in fact. The masks called for under this regulation are light-weight surgical or procedure masks that do not form a seal and are worn in hospitals every day for hours at a time, such as in operating rooms. The benefits of preventing the spread of a potentially lethal virus by wearing a surgical mask outweighs any insignificant loss in one's ability to communicate because of the mask.

The regulation is designed to give healthcare providers a choice in how they protect patients from influenza, i.e., either immunization or mask

wear. Requiring unvaccinated employees to wear masks when in areas where patients are likely to be present is intended to protect the health and safety of our patients, not as punishment for employees who exercise their right to refuse vaccination. Requiring mask usage is consistent with the employer's right to require the use of safety equipment and clothing.

Comment: OMH should withdraw its proposed regulations until it has been able to get input from impacted employees, gather more information regarding scientific research and await the decision of the courts regarding the lawsuit against the State over the regulations passed by the Department of Health and the lawsuit filed against OMH over existing emergency regulations.

Response: After careful review and consideration of all comments, OMH has determined that the regulation will be published for final adoption with no changes.

Niagara Frontier Transportation Authority

NOTICE OF ADOPTION

Smoking

I.D. No. NFT-09-14-00002-A

Filing No. 331

Filing Date: 2014-04-28

Effective Date: 2014-05-14

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

Action taken: Amendment of Part 1151 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 1299-e (14), 1299-f (4) and (7)

Subject: Smoking.

Purpose: To clarify where at NFTA locations it is permissible to use electronic or battery-operated vapor inhalation devices.

Text or summary was published in the March 5, 2014 issue of the Register, I.D. No. NFT-09-14-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Brigitte R. Whitmore, Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14203, (716) 855-7219, email: Brigitte_Whitmore@nfta.com

Assessment of Public Comment

The agency received one comment in support of the proposed amendment. An anonymous employee of the Niagara Frontier Transportation Authority forwarded a copy of the opinion piece of Frank J. Dinan, Ph.D., titled "Another Voice: E-cigarettes need to be regulated, quickly" that was published in The Buffalo News on April 15, 2014.

Public Service Commission

EMERGENCY/PROPOSED

RULE MAKING

NO HEARING(S) SCHEDULED

Electricity Bill Discounts for Low Income Customers

I.D. No. PSC-19-14-00002-EP

Filing Date: 2014-04-24

Effective Date: 2014-04-24

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

Proposed Action: The Public Service Commission adopted an order approving a Niagara Mohawk Power Corporation d/b/a National Grid proposal to provide bill credits to customers enrolled in both the Company's

electric Low Income Discount Program and its AffordAbility Program to provide financial assistance for the payment of those customers' electric bills.

Statutory authority: Public Service Law, sections 65 and 66

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

Specific reasons underlying the finding of necessity: This action is taken on an emergency basis, under Public Service Law §§ 65 and 66, to grant the petition of Niagara Mohawk Power Corporation d/b/a National Grid to provide bill credits to customers enrolled in both the Company's electric Low Income Discount Program and its AffordAbility Program to provide financial assistance for the payment of those customers' electric bills. The bill credit will help offset unprecedented price increases that occurred in the winter months of 2013 - 2014. Without such aid, customers most in need of assistance may not be able to pay their electricity bills resulting in terminations of service, as well as potentially uncollectible arrears that will have to be borne by the Company's other customers who are facing the same unprecedented price increases. This relief is being provided on an emergency basis because the bill increases are to go into effect as of the Company's May 2014 bills. To be effective, relief must be provided before May 1, 2014. Should relief not be granted timely, customers who can ill-afford to lose electric service which can affect heating, cooking and other life necessities may face shut offs due to unpaid bills.

Subject: Electricity bill discounts for low income customers.

Purpose: To provide credits to low income customers to offset the effect of unprecedented bill increases.

Substance of emergency/proposed rule: The Public Service Commission adopted an Order granting, on an emergency basis, the request of Niagara Mohawk Power Corporation d/b/a National Grid to provide bill credits to customers enrolled in both the Company's electric Low Income Discount Program and its AffordAbility Program to provide financial assistance for the payment of those customers' electric bills. Funding for the discounts is already provided in the Company's effective rate plan, however, the rate plan does not provide the flexibility necessary for the Company to provide the proposed discount absent Commission authorization. The credit will be provided to eligible customers in their May 2014 electric bills or as soon thereafter as practicable. The discounts are designed to help the Company's most vulnerable customers by offsetting the effect of anticipated bill increases caused by unprecedented cost increases that occurred during the winter months of 2013-2014.

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 July 22, 2014.

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: deborah.swatling@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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-E-0201EP6)

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

Stay of Certain Provisions of a Prior Commission Order in Cases 12-M-0476, 98-M-1343, 06-M-0647 and 98-M-0667

I.D. No. PSC-19-14-00003-EP

Filing Date: 2014-04-25

Effective Date: 2014-04-25

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

Proposed Action: The Public Service Commission adopted an order in Cases 12-M-0476, 98-M-1343, 06-M-0647 and 98-M-0667 procedurally granting petitions for rehearing and issuing a stay of certain enumerated provisions of the Commission's Order Taking Actions to Improve the

Residential and Small Non-residential Retail Access Markets issued on February 25, 2014 in those same cases.

Statutory authority: Public Service Law, sections 5(1)(b) and 66(1)

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

Specific reasons underlying the finding of necessity: This action is taken on an emergency basis, under Public Service Law §§ 5(1)(b) and 66(1), to issue a stay of certain provisions of the Public Service Commission's (Commission) Order Taking Actions to Improve the Residential and Small Non-residential Retail Access Markets issued on February 25, 2014 in Cases 12-M-0476, 98-M-1343, 06-M-0647 and 98-M-0667 (February Order). Multiple parties submitted petitions for rehearing on March 27, 2014, which raised numerous issues with the Commission's February Order. Addressing the Petitions for rehearing, as provided for in PSL § 22 and 16 NYCRR § 3.7, is in the public interest. Parties will have the opportunity to comment on the Petitions before this Commission addresses the merits of the issues raised in them. Immediate issuance of this Order pursuant to SAPA § 202(6) is necessary for the preservation of the general welfare of consumers in the retail energy market. The issuance of the stay of the provisions enumerated above will allow the rehearing process to proceed in an orderly fashion. Accordingly, compliance with the advance notice and comment requirements of SAPA § 202(1) would be contrary to the public interest.

Subject: The stay of certain provisions of a prior Commission Order in Cases 12-M-0476, 98-M-1343, 06-M-0647 and 98-M-0667.

Purpose: To stay certain provisions of a prior Commission Order to allow the rehearing process to proceed in an orderly fashion.

Substance of emergency/proposed rule: On April 25, 2014 The Public Service Commission adopted an Order (April Order) staying, on an emergency basis, certain enumerated provisions of its February 25, 2014 Order Taking Actions to Improve the Residential and Small Non-residential Retail Access Markets (February Order) in Cases 12-M-0476, 98-M-1343, 06-M-0647 and 98-M-0667. The April Order procedurally granted rehearing in response to multiple parties petitions for rehearing filed on March 27, 2014. Further, the April Order granted a stay of certain enumerated provisions of the February Order. The stay will allow the rehearing process to proceed in an orderly fashion.

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 July 23, 2014.

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-M-0476EP8)

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

Emergency Approval of Tariff Amendment to Effectuate the NYISO New Capacity Zone

I.D. No. PSC-19-14-00004-EP

Filing Date: 2014-04-25

Effective Date: 2014-04-25

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

Proposed Action: The Public Service Commission adopted an order approving amendments to Central Hudson Gas & Electric Company electric tariff schedule, P.S.C. No. 15 — Electricity, to effectuate changes in conformance with the establishment of the New York Independent System Operator (NYISO) new capacity zone. The current tariff language specifically references the New York Control Area (NYCA) price for capacity charges billed to customers taking service under the Company's Hourly Pricing Provision (HPP). However, effective May 1, 2014, in addition to

making a portion of its capacity purchases at the NYCA, the Company will be required to purchase the majority of its capacity at the new Lower Hudson Valley (LHV) capacity zone. As such, the Central Hudson approved tariff revisions that replace the specific reference to the NYCA price with more general language that accurately reflects the price for capacity charges billed to HPP customers.

Statutory authority: Public Service Law, section 66

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

Specific reasons underlying the finding of necessity: This action is taken on an emergency basis, in accordance with the State Administrative Procedure Act (SAPA) § 202(6)(a) and (b), is necessary for the preservation of the general welfare of Central Hudson ratepayers and compliance with the advance notice and publication requirement of SAPA § 202(1) would be contrary to the public interest. Such emergency adoption is needed to effectuate necessary changes resulting from the implementation of the new LHV capacity zone and to ensure that full service Market Price Charge (MPC) customers, the majority of which are residential customers, do not unfairly subsidize the increase in the new LHV capacity price that would otherwise be paid by Hourly Pricing Provision (HPP) customers. It is estimated that such subsidization would result in an additional 2.2% payment by MPC customers. In view of the fact that any additional costs resulting from the implementation of the LHV capacity zone will become effective May 1, 2014, the approval of the filed tariff leaves should be expeditiously approved to avoid any additional costs to be paid by MPC customers.

Subject: Emergency approval of tariff amendment to effectuate the NYISO new capacity zone.

Purpose: Approval of tariff amendment to effectuate the NYISO new capacity zone.

Substance of emergency/proposed rule: The Public Service Commission adopted an Order approving filed amendments by Central Hudson Gas & Electric Company (Central Hudson or Company) to the electric tariff schedule, P.S.C. No. 15 — Electricity, to effectuate changes in conformance with the establishment of the New York Independent System Operator (NYISO) new capacity zone. The current tariff language specifically references the New York Control Area (NYCA) price for capacity charges billed to customers taking service under the Company's Hourly Pricing Provision (HPP). However, effective May 1, 2014, in addition to making a portion of its capacity purchases at the NYCA, the Company will be required to purchase the majority of its capacity at the new Lower Hudson Valley (LHV) capacity zone. As such, the Company's tariff revisions that replace the specific reference to the NYCA price with more general language that accurately reflects the price for capacity charges billed to HPP customers.

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 July 23, 2014.

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-E-0133EP1)

NOTICE OF ADOPTION

Denying Windham Village's Petition to Increase Its Annual Revenues

I.D. No. PSC-23-13-00007-A

Filing Date: 2014-04-28

Effective Date: 2014-04-28

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

Action taken: On 4/24/14, the PSC adopted an order denying the petition of Windham Village, Inc. (Windham Village) to increase its annual revenues by approximately \$15,000 or 61.3% and to convert its tariff to an electronic format.

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

Subject: Denying Windham Village's petition to increase its annual revenues.

Purpose: To deny Windham Village's petition to increase its annual revenues.

Substance of final rule: The Commission, on April 24, 2014, adopted an order denying the petition of Windham Village, Inc. to increase its annual revenues by about \$15,000 or 61.3%, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-W-0212SA1)

NOTICE OF ADOPTION

Approving NYAW's Petition Regarding the Disposition of a Property Tax Refund

I.D. No. PSC-36-13-00005-A

Filing Date: 2014-04-28

Effective Date: 2014-04-28

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

Action taken: On 4/24/14, the PSC adopted the terms of a joint proposal for New York American Water Company (NYAW) to allocate a property tax refund received from the Village of Malverne for \$722,612.

Statutory authority: Public Service Law, section 113(2)

Subject: Approving NYAW's petition regarding the disposition of a property tax refund.

Purpose: To approve NYAW's petition regarding the disposition of a property tax refund.

Substance of final rule: The Commission, on April 24, 2014, adopted the terms of a joint proposal for New York American Water Company to allocate, between shareholders and customers a \$722,612 property tax refund received from the Village of Malverne, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-W-0297SA1)

NOTICE OF ADOPTION

Denying a Petition of Saratoga to Buy Facilities Owned by Lakeview

I.D. No. PSC-51-13-00012-A

Filing Date: 2014-04-25

Effective Date: 2014-04-25

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

Action taken: On 4/24/14, the PSC adopted an order denying the petition of Saratoga Water Services, Inc. (Saratoga) for a waiver of its tariff; of a service agreement and a loan of \$175,000 to buy facilities owned by Lakeview Outlets, Inc. (Lakeview).

Statutory authority: Public Service Law, sections 4(1), 20(1), 89-b and 89-f

Subject: Denying a petition of Saratoga to buy facilities owned by Lakeview.

Purpose: To deny a petition of Saratoga to buy facilities owned by Lakeview.

Substance of final rule: The Commission, on April 24, 2014, adopted an order denying the petition of Saratoga Water Services, Inc. requesting a waiver of its tariff; of a service agreement and a loan of \$175,000 to buy facilities owned by Lakeview Outlets, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-W-0486SA1)

NOTICE OF ADOPTION

Authorizing NYSERDA to Continue the Photovoltaic Programs from 2016 - 2023

I.D. No. PSC-02-14-00005-A

Filing Date: 2014-04-24

Effective Date: 2014-04-24

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

Action taken: On 4/24/14, the PSC adopted an order authorizing New York State Energy Research and Development Authority (NYSERDA) to fund, implement and administer the continuation of the Renewable Portfolio Customer-Sited Tier Photovoltaic programs from 2016 - 2023.

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

Subject: Authorizing NYSERDA to continue the Photovoltaic programs from 2016 - 2023.

Purpose: To authorize NYSERDA to continue the Photovoltaic programs from 2016 - 2023.

Substance of final rule: The Commission, on April 24, 2014, adopted an order authorizing the New York State Energy Research and Development Authority to allocate up to \$960,556,000 to fund, implement and administer the continuation of the solar photovoltaic programs, currently under the Customer-Sited Tier of the Renewable Portfolio Standard program, from 2016 through 2023, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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.

(03-E-0188SA44)

NOTICE OF ADOPTION

Granting Hamilton's Petition to Construct and Operate a Municipal Gas Distribution System

I.D. No. PSC-04-14-00006-A

Filing Date: 2014-04-24

Effective Date: 2014-04-24

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

Action taken: On 4/24/14, the PSC adopted an order granting the Village of Hamilton Municipal Utilities Commission's (Hamilton) petition to construct and operate a municipal gas distribution system.

Statutory authority: Public Service Law, sections 65 and 68

Subject: Granting Hamilton's petition to construct and operate a municipal gas distribution system.

Purpose: To grant Hamilton's petition to construct and operate a municipal gas distribution system.

Substance of final rule: The Commission, on April 24, 2014, adopted an order granting the Village of Hamilton Municipal Utilities Commission's petition to construct and operate a municipal gas distribution system, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0584SA1)

NOTICE OF ADOPTION

Approving the Transfer of Ownership Interests in New Athens Generating Company, LLC

I.D. No. PSC-06-14-00008-A

Filing Date: 2014-04-25

Effective Date: 2014-04-25

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

Action taken: On 4/24/14, the PSC adopted an order approving the petition of MACH Gen LLC and New Athens Generating Company to transfer ownership interests in New Athens and its 936 MW generation facility located in the Town of Athens.

Statutory authority: Public Service Law, sections 5(1)(b) and 70

Subject: Approving the transfer of ownership interests in New Athens Generating Company, LLC.

Purpose: To approve the transfer of ownership interests in New Athens Generating Company, LLC.

Substance of final rule: The Commission, on April 24, 2014, adopted an order approving a petition of MACH Gen LLC and New Athens Generating Company, LLC (New Athens) approving transfers of ownership interests in New Athens and its 936 MW generation facility located in the Town of Athens, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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.

(14-E-0022SA1)

NOTICE OF ADOPTION

Adopting Emergency Rule As a Permanent Rule

I.D. No. PSC-06-14-00009-A

Filing Date: 2014-04-25

Effective Date: 2014-04-25

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

Action taken: On 4/24/14, the PSC adopted an order approving an emer-

agency rule as a permanent rule allowing Niagara Mohawk Power Corporation d/b/a National Grid to waive certain tariff requirements related to customer's bills.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Adopting emergency rule as a permanent rule.

Purpose: To adopt emergency rule as a permanent rule.

Substance of final rule: The Commission, on April 24, 2014, adopted an emergency rule as a permanent rule approving Niagara Mohawk Power Corporation d/b/a National Grid's request to waive requirements of certain tariff provisions related to customer's bills, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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.

(14-E-0026EA1)

NOTICE OF ADOPTION

Allowing National Grid to Recover Deferral Costs in PSC 220—Electricity

I.D. No. PSC-07-14-00015-A

Filing Date: 2014-04-25

Effective Date: 2014-04-25

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

Action taken: On 4/24/14, the PSC adopted an order approving a petition of Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) to establish a deferral cost recovery method in PSC 220—Electricity.

Statutory authority: Public Service Law, sections 4, 5, 65 and 66

Subject: Allowing National Grid to recover deferral costs in PSC 220—Electricity.

Purpose: To allow National Grid to recover deferral costs in PSC 220—Electricity.

Substance of final rule: The Commission, on April 24, 2014, adopted a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid to establish a deferral cost recovery method in PSC 220—Electricity, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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.

(14-E-0026SA2)

NOTICE OF ADOPTION

Approving TWC's Petition to Acquire Assets from Haefele in the Towns of Greene and Smithville

I.D. No. PSC-09-14-00009-A

Filing Date: 2014-04-29

Effective Date: 2014-04-29

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

Action taken: On 4/24/14, the PSC adopted an order approving the petition of Time Warner Cable Northeast LLC (TWC) to acquire cable televi-

sion facilities and franchises in the Towns of Greene and Smithville from Haefele TV, Inc. (Haefele).

Statutory authority: Public Service Law, section 222

Subject: Approving TWC's petition to acquire assets from Haefele in the Towns of Greene and Smithville.

Purpose: To approve TWC's petition to acquire assets from Haefele in the Towns of Greene and Smithville.

Substance of final rule: The Commission, on April 24, 2014, adopted an order approving the petition of Time Warner Cable Northeast, LLC for the acquisition of certain cable television facilities and franchises in the Towns of Greene and Smithville from Haefele TV, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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.

(14-V-0023SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Submetering of Electricity

I.D. No. PSC-19-14-00013-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Riverwalk 7, LLC to submeter electricity at 480 Main 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 for submetering of electricity.

Purpose: To consider the request of Riverwalk 7, LLC to submeter electricity at 480 Main Street, New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Riverwalk 7, LLC to submeter electricity at 480 Main Street, New York, NY, located in the territory of Consolidated Edison Company, Inc.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@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.

(14-E-0145SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Market Supply Charge

I.D. No. PSC-19-14-00014-P

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

Proposed Action: The Public Service Commission is considering whether

to approve, reject or modify, in whole or in part, a proposed filing by Orange and Rockland Utilities, Inc. revising the Market Supply Charge for capacity related costs in P.S.C. No. 3—Electricity.

Statutory authority: Public Service Law, section 66(12)

Subject: Market Supply Charge.

Purpose: To make tariff revisions to the Market Supply Charge for capacity related costs.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal by Orange and Rockland Utilities, Inc. (O&R) to revise its Market Supply Charge for capacity related costs due to the New York Independent System Operator's (NYISO) new capacity zone, G-J Locality, effective May 1, 2014. O&R will be required to procure a percentage of its capacity requirement from suppliers electrically located with the G-J Locality. As a result of the NYISO changes, O&R proposes to revise tariff language related to capacity costs and to remove references to Zone G with respect to capacity purchases. The proposed filing has an effective date August 19, 2014.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@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.

(14-E-0147SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Permit the Use of the Sensus AccuWAVE for Use in Residential and Commercial Gas Meter Applications

I.D. No. PSC-19-14-00015-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by National Grid, for the approval to use the Sensus accuWAVE 415TC diaphragm meter.

Statutory authority: Public Service Law, section 67(1)

Subject: Whether to permit the use of the Sensus accuWAVE for use in residential and commercial gas meter applications.

Purpose: To permit gas utilities in New York State to use the Sensus accuWAVE 415TC gas meter.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by National Grid, to use the Sensus accuWAVE 415TC diaphragm meter in residential and commercial natural gas meter applications.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@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.

(14-G-0146SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rider P - Purchases of Installed Capacity

I.D. No. PSC-19-14-00016-P

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

Proposed Action: The Public Service Commission is considering whether to approve, reject or modify, in whole or in part, a proposed filing by Consolidated Edison Company of New York, Inc. revising Rider P - Purchases of Installed Capacity in P.S.C. No. 10—Electricity.

Statutory authority: Public Service Law, section 66(12)

Subject: Rider P - Purchases of Installed Capacity.

Purpose: To revise the definition of Baseline Service Level and provisions of the Capacity Payment Rate.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. (Con Edison) to make revisions to P.S.C. No. 10—Electricity, regarding Rider P - Purchases of Installed Capacity to become effective August 18, 2014. Con Edison proposes: (1) to revise the definition of Baseline Service Level to indicate that it is the baseline kilowatt demand level as determined using the New York Independent System Operator's (NYISO) methodology for setting a Special Case Resources baseline; (2) to revise Capacity Payment Rate by replacing the name "Installed Capacity Level" to "Unforced Capacity Availability" to reflect the fact that payment is based on the Installed Capacity Level adjusted for past performance; and (3) to revise the reference of the "ROS" (rest of state) NYISO capacity zone to the new NYISO capacity zone of "G-J Locality".

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@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.

(14-E-0144SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Electronic Deferred Payment Agreements (DPAs)

I.D. No. PSC-19-14-00017-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 filing by National Fuel Gas Distribution Corporation proposing revisions to the Company's rates, charges, rules and regulations contained in P.S.C. No. 8—Gas to make electronic Deferred Payment Agreements permanent.

Statutory authority: Public Service Law, sections 37, 66(12)

Subject: Electronic Deferred Payment Agreements (DPAs).

Purpose: To make permanent a program to allow customers to negotiate the terms of a DPA over the phone and electronically sign the DPA.

Substance of proposed rule: The Public Service Commission is considering whether to approve, reject, or modify, in whole or in part, an April 22, 2014 petition of National Fuel Gas Distribution Corporation to make permanent a pilot program for the voluntary use of electronic Deferred Payment Agreements (DPA). The pilot program allows customers to negotiate the terms of a DPA over the phone and have an electronic document prepared for the customer's pre-signing review. The customer then has the

ability to execute the DPA using electronic signature protocols authorized under New York's Electronic Signature and Records Act. The Commission may also consider other 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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@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.

(13-G-0016SP2)

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

Uniform System of Accounts, Deferral of an Expense Item

I.D. No. PSC-19-14-00018-P

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

Proposed Action: The Public Service Commission is considering a Niagara Mohawk Power Corporation d/b/a National Grid petition to defer an Actuarial Experience Pension Settlement Loss for the year ending March 31, 2014.

Statutory authority: Public Service Law, section 66

Subject: Uniform System of Accounts, deferral of an expense item.

Purpose: Authorization of a deferral for an expense item beyond the end of the year in which it was incurred.

Substance of proposed rule: Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) filed a petition with the New York State Public Service Commission (Commission) seeking to defer an Actuarial Experience Pension Settlement Loss of approximately \$13.5 million for Niagara Mohawk's 2014 Fiscal Year. In requesting authority to establish the deferral, Niagara Mohawk is relying on Section III.B.2 of the Commission's "Statement of Policy Concerning the Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits other than Pensions." The Commission is considering whether to approve, reject or modify, in whole or in part, the relief requested in Niagara Mohawk's petition.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@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.

(14-M-0042SP1)

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

Approval of Assets

I.D. No. PSC-19-14-00019-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 whether to approve, deny or modify a petition filed by New York American Water Company, Inc. to approve an Agreement of Sale of Lucas Estates Water Company, Inc. to Acquire 100% of the Assets of Lucas Estates.

Statutory authority: Public Service Law, section 89-h

Subject: Approval of assets.

Purpose: To allow or disallow New York American Water Company to approve agreement of sale.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, a petition by New York American Water Company, Inc. (f/k/a Long Island Water Corporation) seeking authorization to purchase 100% of the assets of Lucas Estates Water Company, Inc. Additionally, the Commission will consider moving Lucas Estate customers to the Long Island District tariff rates which should result in lower water bills for Lucas Estates customers. The Commission shall also consider all other 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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, 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.

(14-W-0148SP1)