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 Agriculture and Markets

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Host Materials (Potatoes, Tomatoes and Eggplants) and Soil

I.D. No. AAM-44-14-00004-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 127.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Host materials (potatoes, tomatoes and eggplants) and soil.

Purpose: To lift the golden nematode quarantine in portions of Nassau, Suffolk and Orleans Counties.

Substance of proposed rule (Full text is not posted on a State website): The proposed amendments to section 127.2 of 1 NYCRR lift the golden nematode quarantine in all of Nassau County, except for portions of the Town of Oyster Bay. The amendments also lift the quarantine in all of Suffolk County, except for the Towns of Riverhead, East Hampton, Southampton, Southold and Shelter Island and portions of the Towns of Huntington and Brookhaven. Finally, the amendments lift the quarantine in the Town of Clarendon and portions of the Town of Barre in Orleans County.

Text of proposed rule and any required statements and analyses may be obtained from: Christopher A. Logue, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law (AML) provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

AML Section 164 provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

AML Section 167 provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of AML Article 14, Prevention and Control of Disease in Trees and Plants; Insect Pests; Sale of Fruit-bearing Trees. Section 167 also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of AML Article 14 as he may deem necessary.

2. Legislative objectives:

The lifting of the quarantine as set forth in the proposed amendments accords with the public policy objectives the Legislature sought to advance by enacting AML Article 14. By lifting the quarantine in portions of Nassau, Suffolk and Orleans Counties, the amendments address changes in circumstances, namely, the eradication of the golden nematode in these areas.

3. Needs and benefits:

The golden nematode, Globodera rostchiensis, non-indigenous to the United State, is a microscopic eelworm, native to Europe. It is one of the world's most destructive crop pests, which attacks potatoes, tomatoes and eggplants by boring into their roots. The resulting damage by the golden nematode affects the growth and crop yield of the plant and may result in the death of the plant. Once established in the soil, the golden nematode is easily spread to non-infected areas through the movement of the infested plants and infected soil. The golden nematode was discovered in Europe during the 19th century and was first detected in the United States on a potato farm on Long Island in 1941. The pest subsequently spread beyond that farm to other areas on Long Island. The emergence of this pest prompted the establishment of a cooperative federal-state golden nematode control program shortly after the end of World War II. The program was dedicated to the control of the golden nematode and included laboratory analysis, research, survey activities and quarantine enforcement. In 1967, the golden nematode was detected on a farm near the Town of Prattsburg in Steuben County and subsequently spread to parts of Cayuga, Genesee, Livingston, Orleans, Seneca and Wayne Counties. The establishment of federal and state golden nematode quarantines as well as restrictions on the movement of host materials played key roles in preventing the further spread of the golden nematode. As of 2012, the quarantines had effectively confined this pest to 5,984 acres of farmland in Nassau and Suffolk Counties on Long Island and the Counties of Cayuga, Genesee, Livingston, Orleans, Seneca, Steuben and Wayne in western New York State.

This rule amends the golden nematode quarantine in section 127.2 of 1 NYCRR by lifting the quarantine in all of Nassau County, except portions of the Town of Oyster Bay; by lifting the quarantine in all of Suffolk County, except in the Towns of Riverhead, East Hampton, Southampton, Southold, Shelter Island and portions of Huntington and Brookhaven; and by lifting the quarantine in all of the Town of Clarendon and a portion of the Town of Barre in Orleans County. Potato, tomato and eggplant fields in these areas have had a sequence of surveys, all of which have proven to be negative for golden nematode. It has also been determined that several of the fields within these quarantined areas have never been used in host crop production. Accordingly, the lifting of the golden nematode quarantine in the areas referenced above will ease regulatory burdens on growers

of host crops in those areas without compromising plant health. The United States Department of Agriculture (USDA) is in the process of drafting a federal quarantine which will mirror the State's amended quarantine, as proposed in the rule making. USDA, however, is awaiting adoption of the State quarantine amendments before adopting its quarantine.

4. Costs:

(a) Costs to regulated parties: The rule will not result in costs to private regulated parties. Regulated parties may realize a profit if they decide to return the fields in the former quarantined areas to host crop production.

(b) Costs to the agency, the State and local government: None. The Department may realize cost savings by no longer inspecting the fields in the former quarantined areas.

(c) Conclusions that the proposed rule would not result in any additional costs is based upon a review of Department inspection protocols and observations of the practices of regulated parties.

5. Local government mandate:

There are no additional programs, services, duties or responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or any other special district.

6. Paperwork:

These amendments will not result in any additional paperwork or electronic reporting.

7. Duplication:

The USDA anticipates adopting a federal quarantine that will duplicate the quarantine proposed in this rule. The duplication would not result in any additional requirements being imposed on any regulated party.

8. Alternatives:

The only alternative considered was to leave the quarantine in place in these areas. This alternative was rejected, since leaving the golden nematode quarantine in place where the pest has not been observed during a sequence of surveys, is inconsistent with existing scientific protocols and imposes an unnecessary burden on regulated parties. In light of this, the only viable alternative is to lift the quarantine in these areas.

9. Federal standards:

The proposed regulations do not exceed any minimum standards for the same or similar subject areas. The USDA is in the process of drafting a federal quarantine which will mirror the State's amended quarantine. USDA, however, is awaiting adoption of the amended State quarantine before adopting its quarantine.

10. Compliance schedule:

It is anticipated that regulated parties would be able to comply with the rule immediately upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule amends the golden nematode quarantine in section 127.2 of 1 NYCRR by lifting the quarantine in all of Nassau County, except portions of the Town of Oyster Bay; by lifting the quarantine in all of Suffolk County, except in the Towns of Riverhead, East Hampton, Southampton, Southold, Shelter Island and portions of Huntington and Brookhaven; and by lifting the quarantine in all of the Town of Clarendon and a portion of the Town of Barre in Orleans County.

The lifting of the quarantine in these areas would affect 788 potato and tomato growers, all of whom are small businesses.

It is anticipated that the rule would have no impact on local governments.

2. Compliance requirements:

The rule would not impose any additional compliance requirements on small businesses or local governments.

3. Professional services:

No new professional services would be needed to comply with this rule.

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule: None.

(b) Annual cost for continuing compliance with the proposed rule: None.

It is anticipated that the rule will have no impact on local governments.

5. Economic and technological feasibility:

Compliance with the proposed rule by small businesses and local governments would be economically and technologically feasible because the rule would not impose any additional compliance requirements. Lifting the golden nematode quarantine in the areas referenced above would eliminate a regulatory burden on small businesses in those areas.

It is anticipated that the rule would have no impact on local governments.

6. Minimizing adverse impact:

Since the proposed rule will lift the quarantine in portions of Nassau, Suffolk and Orleans Counties, the rule minimizes adverse impact since regulated parties in those areas would no longer be subject to the quarantine and the requirements applicable to quarantined areas.

It is anticipated that the rule would have no impact on local governments.

7. Small business and local government participation:

Department officials met with four farmers who will remain under quarantine because their farms are located in areas where the quarantine would not be lifted by the proposed rule. Soil samples were taken from each farm, analyzed, and found to be negative for golden nematode. Additional negative samples would be required before the quarantine could be lifted in these areas.

The Department did not engage with any local governments because it is anticipated that the rule would have no impact on local governments.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

This rule amends the golden nematode quarantine in section 127.2 of 1 NYCRR by lifting the quarantine in all of Nassau County, except portions of the Town of Oyster Bay; by lifting the quarantine in all of Suffolk County, except in the Towns of Riverhead, East Hampton, Southampton, Southold, Shelter Island and portions of Huntington and Brookhaven; and by lifting the quarantine in all of the Town of Clarendon and a portion of the Town of Barre in Orleans County.

Lifting of the quarantine in these areas would affect 788 potato and tomato growers, all of whom are located in rural areas.

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

None. The rule will not impose any reporting, record keeping or other compliance requirements on regulated parties. Further, no new professional services will be needed to comply with the proposal.

3. Costs:

None. There are no new costs as a result of this rule proposal.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the proposed regulations would minimize adverse economic impact on all affected regulated parties, including those in rural areas. By lifting the golden nematode quarantine in the areas referenced above, regulated parties in those areas would no longer be subject to the quarantine and the requirements applicable to the quarantined areas.

5. Rural area participation:

Department officials met with four farmers who would remain under quarantine because their farms are located in areas where the quarantine would not be lifted by the proposed rule. Soil samples were taken from each farm, analyzed, and found to be negative for golden nematode. Additional negative samples would be required before the quarantine could be lifted in these areas.

Job Impact Statement

The proposed amendments would not have a substantial adverse impact on jobs and employment opportunities. The proposed rule amends the golden nematode quarantine in section 127.2 of 1 NYCRR by lifting the quarantine in all of Nassau County, except portions of the Town of Oyster Bay; by lifting the quarantine in all of Suffolk County, except in the Towns of Riverhead, East Hampton, Southampton, Southold, Shelter Island and portions of Huntington and Brookhaven; and by lifting the quarantine in all of the Town of Clarendon and a portion of the Town of Barre in Orleans County. The proposed amendments would relax regulatory burdens on regulated parties. It is estimated that there are 788 potato and tomato producers in these areas, employing approximately 3,343 people. By lifting the quarantine in areas where a sequence of surveys have proven negative for golden nematode, the rule would help to prevent adverse economic consequences to those areas and in so doing, protect the jobs and employment opportunities associated with the production of potatoes, tomatoes and eggplant in New York State.

Department of Civil Service

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-14-00005-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office of Alcoholism and Substance Abuse Services," by adding thereto the position of Director Affirmative Action Programs.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-14-00006-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Taxation and Finance, by adding thereto the position of øChief Information Security Officer 1 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-14-00007-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by increasing the number of positions of Special Assistant from 11 to 12.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-14-00008-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by increasing the number of positions of Special Assistant from 2 to 3.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-14-00009-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Audit and Control, by increasing the number of positions of Special Investment Officer from 49 to 57.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-14-00010-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "State Board of Elections," by adding thereto the position of Administrative Assistant and by increasing the number of positions of Associate Counsel from 2 to 5, Election Law Enforcement Investigator from 1 to 4, Investigative Auditor from 8 to 10 and Secretary from 4 to 5.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-14-00011-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified

Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of General Services," by adding thereto the position of Chief Risk Officer.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-14-00012-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a heading and positions from the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, by deleting therefrom the heading "Governor's Judicial Nominating Committee," and the positions of Assistant Counsel (2).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-14-00013-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State under the subheading "Joint Commission on Public Ethics," by deleting therefrom the position of Confidential Legal Assistant and adding thereto the positions of Investigative Assistant and Special Assistant.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-14-00014-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Civil Service, by adding thereto the position of øAssistant Director Policy Analysis and Strategic Planning (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-14-00015-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department, by adding thereto the position of øChief Privacy Officer (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-14-00016-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health, by adding thereto the positions of Assistant Counsel (1) and Associate Counsel (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-14-00017-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the New York State Teachers' Retirement System, by deleting therefrom the positions of NYSTRS Investment Officer 1 (6), NYSTRS Investment Officer 2 (11) (various parenthetics), NYSTRS Investment Officer 3 (11) (various parenthetics) and Teachers Retirement System Investment Officer 2 (Quantitative Strategies/Risk Management Investment) (1) and by adding thereto the positions of TRS Investment Officer 1 (6), TRS Investment Officer 2 (various parenthetics) (16) and TRS Investment Officer 3 (various parenthetics) (11).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-44-14-00018-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by deleting therefrom the position of øSupport Services Assistant (1); in the Executive Department under the subheading "Division of Human Rights," by deleting therefrom the position of øSupport Services Assistant (1); in the Department of Law, by deleting therefrom the positions of øSupport Services Assistant (4); in the Education Department, by deleting therefrom the positions of øSupport Services Assistant; in the Department of Health, by deleting therefrom the position of øSupport Services Assistant (1); in the Department of Public Service, by deleting therefrom the positions of øSupport Services Assistant (2); in the State University of New York under the subheading "Central Administration," by deleting therefrom the position of øSupport Services Assistant (1); and, in the State Department Service under the subheading "All State Departments and Agencies," by adding thereto the positions of øSupport Services Assistant.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Department of Economic Development

EMERGENCY
RULE MAKING

START-UP NY Program

I.D. No. EDV-44-14-00001-E
Filing No. 877
Filing Date: 2014-10-14
Effective Date: 2014-10-14

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

Action taken: Addition of Part 220 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 21, sections 435-36; L. 2013, ch. 68

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

Specific reasons underlying the finding of necessity: On June 24, 2013, Governor Andrew Cuomo signed into law the SUNY Tax-free Areas to Revitalize and Transform UPstate New York (START-UP NY) program, which offers an array of tax benefits to eligible businesses and their employees that locate in facilities affiliated with New York universities and colleges. The START-UP NY program will leverage these tax benefits to attract innovative start-ups and high tech industries to New York so as to create jobs and promote economic development.

Regulatory action is required to implement the START-UP NY program. The legislation creating the START-UP NY program delegated to the Department of Economic Development the establishment of procedures for the implementation and execution of the START-UP NY program. Without regulatory action by the Department of Economic Development, procedures will not be in place to accept applications from institutions of higher learning desiring to create Tax-Free Areas, or businesses wishing to participate in the START-UP NY program.

Adoption of this rule will enable the State to begin accepting applications from businesses to participate in the START-UP NY program, and represent a step towards the realization of the strategic objectives of the START-UP NY program: attracting and retaining cutting-edge start-up companies, and positioning New York as a global leader in high tech industries.

Subject: START-UP NY Program.

Purpose: Establish procedures for the implementation and execution of START-UP NY.

Substance of emergency rule: START-UP NY is a new program designed to stimulate economic development and promote employment of New Yorkers through the creation of tax-free areas that bring together educational institutions, innovative companies, and entrepreneurial investment.

1) The regulation defines key terms, including: "business in the formative stage," "campus," "competitor," "high tech business," "net new job," "new business," and "underutilized property."

2) The regulation establishes that the Commissioner shall review and approve plans from State University of New York (SUNY) colleges, City University of New York (CUNY) colleges, and community colleges seeking designation of Tax-Free NY Areas, and report on important aspects of the START-UP NY program, including eligible space for use as Tax-Free Areas and the number of employees eligible for personal income tax benefits.

3) The regulation creates the START-UP NY Approval Board, composed of three members appointed by the Governor, Speaker of the As-

sembly and Temporary President of the Senate, respectively. The START-UP NY Approval Board reviews and approves plans for the creation of Tax-Free NY Areas submitted by private universities and colleges, as well as certain plans from SUNY colleges, CUNY colleges, and community colleges, and designates Strategic State Assets affiliated with eligible New York colleges or universities. START-UP NY Approval Board members may designate representatives to act on their behalf during their absence. START-UP NY Approval Board members must remain disinterested, and recuse themselves where appropriate.

4) The regulation establishes eligibility criteria for Tax-Free Areas. Eligibility of vacant land and space varies based on whether it is affiliated with a SUNY college, CUNY college, community college, or private college, and whether the land or space in question is located upstate, downstate, or in New York City. The regulation prohibits any allocation of land or space that would result in the closure or relocation of any program or service associated with a university or college that serves students, faculty, or staff.

5) The regulation establishes eligibility requirements for businesses to participate in the START-UP program, and enumerates excluded industries. To be eligible, a business must: be a new business to the State at the time of its application, subject to exceptions for NYS incubators, businesses restoring previously relocated jobs, and businesses the Commissioner has determined will create net new jobs; comply with applicable worker protection, environmental, and tax laws; align with the academic mission of the sponsoring institution (the Sponsor); demonstrate that it will create net new jobs in its first year of operation; and not be engaged in the same line of business that it conducted at any time within the last five years in New York without the approval of the Commissioner. Businesses locating downstate must be in the formative stages of development, or engaged in a high tech business. To remain eligible, the business must, at a minimum, maintain net new jobs and the average number of jobs that existed with the business immediately before entering the program.

6) The regulation describes the application process for approval of a Tax-Free Area. An eligible institution may submit a plan to the Commissioner identifying land or space to be designated as a Tax-Free Area. This plan must: identify precisely the location of the applicable land or space; describe business activities to be conducted on the land or space; establish that the business activities in question align with the mission of the institution; indicate how the business would generate positive community and economic benefits; summarize the Sponsor's procedures for attracting businesses; include a copy of the institution's conflict of interest guidelines; attest that the proposed Tax-Free Area will not jeopardize or conflict with any existing tax-exempt bonds used to finance the Sponsor; and certify that the Sponsor has not relocated or eliminated programs serving students, faculty, or staff to create the vacant land. Applications by private institutions require approval by both the Commissioner and START-UP NY Approval Board. The START-UP NY Approval Board is to approve applications so as to ensure balance among rural, urban and suburban areas throughout the state.

7) A sponsor applying to create a Tax-Free Area must provide a copy of its plan to the chief executive officer of any municipality in which the proposed Tax-Free Area is located, local economic development entities, the applicable university or college faculty senate, union representatives and the campus student government. Where the plan includes land or space outside of the campus boundaries of the university or college, the institution must consult with the chief executive officer of any municipality in which the proposed Tax-Free Area is to be located, and give preference to underutilized properties identified through this consultation. The Commissioner may enter onto any land or space identified in a plan, or audit any information supporting a plan application, as part of his or her duties in administering the START-UP program.

8) The regulation provides that amendments to approved plans may be made at any time through the same procedures as such plans were originally approved. Amendments that would violate the terms of a lease between a sponsor and a business in a Tax-Free Area will not be approved. Sponsors may amend their plans to reallocate vacant land or space in the case that a business, located in a Tax-Free Area, is disqualified from the program but elects to remain on the property.

9) The regulation describes application and eligibility requirements for businesses to participate in the START-UP program. Businesses are to submit applications to sponsoring universities and colleges by 12/31/20. An applicant must: (1) authorize the Department of Labor (DOL) and Department of Taxation and Finance (DTF) to share the applicant's tax information with the Department of Economic Development (DED); (2) allow DED to monitor the applicant's compliance with the START-UP program; (3) provide to DED, upon request, information related to its business organization, tax returns, investment plans, development strategy, and non-competition with any businesses in the community but outside of the Tax-Free Area; (4) certify efforts to ascertain that the business would not compete with another business in the same community but outside the Tax-Free Area, including an affidavit that notice regarding the application was published in a daily publication no fewer than five consecutive days; (5) include a statement of performance benchmarks as to new jobs to be created through the applicant's participation in START-UP; (6) provide a statement of consequences for non-conformance with the performance benchmarks, including proportional recovery of tax benefits when the business fails to meet job creation benchmarks in up to three years of a ten-year plan, and removal from the program for failure to meet job creation benchmarks in at least four years of a ten-year plan; (7) identify information submitted to DED that the business deems confidential, proprietary, or a trade secret. Sponsors forward applications deemed to meet eligibility requirements to the Commissioner for further review. The Commissioner shall reject any application that does not satisfy the START-UP program eligibility requirements or purpose, and provide written notice of the rejection to the Sponsor. The Commissioner may approve an application anytime after receipt; if the Commissioner approves the application, the business applicant is deemed accepted into the START-UP NY Program and can locate to the Sponsor's Tax-Free NY Area. Applications not rejected will be deemed accepted after sixty days. The Commissioner is to provide documentation of acceptance to successful applicants.

10) The regulation allows a business to amend a successful application at any time in accordance with the procedure of its original application. No amendment will be approved that would contain terms in conflict with a lease between a business and a SUNY college when the lease was included in the original application.

11) The regulation permits a business that has been rejected from the START-UP program to locate within a Tax-Free Area without being eligible for START-UP program benefits, or to reapply within sixty days via a written request identifying the reasons for rejection and offering verified factual information addressing the reasoning of the rejection. Failure to reapply within sixty days waives the applicant's right to resubmit. Upon receipt of a timely resubmission, the Commissioner may use any resources to assess the claim, and must notify the applicant of his or her determination within sixty days. Disapproval of a reapplication is final and non-appealable.

12) With respect to audits, the regulation requires businesses to provide access to DED, DTF, and DOL to all records relating to facilities located in Tax-Free Areas at a business location within the State during normal business hours. DED, DTF, and DOL are to take reasonable steps to prevent public disclosure of information pursuant to Section 87 of the Public Officers Law where the business has timely informed the appropriate officials, the records in question have been properly identified, and the request is reasonable.

13) The regulation provides for the removal of a business from the program under a variety of circumstances, including violation of New York law, material misrepresentation of facts in its application to the START-UP program, or relocation from a Tax-Free Area. Upon removing a business from the START-UP program, the Commissioner is to notify the business and its Sponsor of the decision in writing. This removal notice provides the basis for the removal decision, the effective removal date, and the means by which the affected business may appeal the removal decision. A business shall be deemed served three days after notice is sent. Following a final decision, or waiver of the right to appeal by the business, DED is to forward a copy of the removal notice to DTF, and the business is not to receive further tax benefits under the START-UP program.

14) To appeal removal from the START-UP program, a business must send written notice of appeal to the Commissioner within thirty days from the mailing of the removal notice. The notice of appeal must contain specific factual information and all legal arguments that form the basis of the appeal. The appeal is to be adjudicated in the first instance by an appeal officer who, in reaching his or her decision, may seek information from outside sources, or require the parties to provide more information. The appeal officer is to prepare a report and make recommendations to the Commissioner. The Commissioner shall render a final decision based upon the appeal officer's report, and provide reasons for any findings of fact or law that conflict with those of the appeal officer.

15) With regard to disclosure authorization, businesses applying to participate in the START-UP program authorize the Commissioner to disclose any information contained in their application, including the projected new jobs to be created.

16) In order to assess business performance under the START-UP program, the Commissioner may require participating businesses to submit annual reports within thirty days at the end of their taxable year describing the businesses' continued satisfaction of eligibility requirements, jobs data, an accounting of wages paid to employees in net new jobs, and any other information the Commissioner may require. The Commissioner shall prepare annual reports on the START-UP program for the Governor and publication on the DED website, beginning December 31, 2014. Information contained in businesses' annual reports may be published in these reports or otherwise disseminated.

17) The Freedom of Information Law is applicable to the START-UP program, subject to disclosure waivers to protect certain proprietary information submitted in support of an application to the START-UP program.

18) All businesses must keep relevant records throughout their participation in the START-UP program, plus three years. DED has the right to inspect all such documents upon reasonable notice.

19) If the Commissioner determines that a business has acted fraudulently in connection with its participation in the START-UP program, the business shall be immediately terminated from the program, subject to criminal penalties, and liable for taxes that would have been levied against the business during the current year.

20) The regulation requires participating universities and colleges to maintain a conflict of interest policy relevant to issues that may arise during the START-UP program, and to report violations of said policies to the Commissioner for publication.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires January 11, 2015.

Text of rule and any required statements and analyses may be obtained from: Jennifer Chung, NYS Department of Economic Development, 633 Third Avenue, New York, NY 10017, (212) 803-3783, email: jchung@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Chapter 68 of the Laws of 2013 requires the Commissioner of Economic Development to promulgate rules and regulations to establish procedures for the implementation and execution of the SUNY Tax-free Areas to Revitalize and Transform UPstate New York program (START-UP NY). These procedures include, but are not limited to, the application processes for both academic institutions wishing to create Tax-Free NY Areas and businesses wishing to participate in the START-UP NY program, standards for evaluating applications, and any other provisions the Commissioner deems necessary and appropriate.

LEGISLATIVE OBJECTIVES:

The proposed rule is in accord with the public policy objectives the New York State Legislature sought to advance by enacting the START-UP NY program, which provides an incentive to businesses to locate critical high-tech industries in New York State as opposed to other competitive markets in the U.S. and abroad. It is the public policy of the State to establish Tax-Free Areas affiliated with New York universities and colleges, and to afford significant tax benefits to businesses, and the employees of those businesses, that locate within these Tax-Free Areas. The tax benefits are designed to attract and retain innovative start-ups and high-tech industries, and secure for New York the economic activity they generate. The proposed rule helps to further such objectives by establishing the application process for the program, clarifying the nature of eligible businesses and facilities, and describing key provisions of the START-UP NY program.

NEEDS AND BENEFITS:

The emergency rule is necessary in order to implement the statute contained in Article 21 of the Economic Development Law, creating the START-UP NY program. The statute directs the Commissioner of Economic Development to establish procedures for the implementation and execution of the START-UP NY program.

Upstate New York has faced longstanding economic challenges due in part to the departure of major business actors from the region. This divestment from upstate New York has left the economic potential of the region unrealized, and left many upstate New Yorkers unemployed.

START-UP NY will promote economic development and job creation in New York, particularly the upstate region, through tax benefits conditioned on locating business facilities in Tax-Free NY Areas. Attracting start-ups and high-tech industries is critical to restoring the economy of upstate New York, and to positioning the state as a whole to be competitive in a globalized economy. These goals cannot be achieved without first establishing procedures by which to admit businesses into the START-UP NY program.

The proposed regulation establishes procedures and standards for the implementation of the START-UP program, especially rules for the creation of Tax-Free NY Areas, application procedures for the admission of businesses into the program, and eligibility requirements for continued receipt of START-UP NY benefits for admitted businesses. These rules allow for the prompt and efficient commencement of the START-UP NY program, ensure accountability of business participants, and promote the general welfare of New Yorkers.

The emergency regulations clarify several items. In Section 220.4(b), language was modified to clarify that the START-UP NY Approval Board reviews and approves Plans for approval as a Tax-Free NY Area from certain, not all, SUNY, CUNY, or community college campuses seeking designation of Tax-Free NY Areas as described in Section 220.5.

In Section 220.7 and 220.8, the regulations have been clarified to permit schools to submit information identifying the space or land proposed for designation in digital formats approved by the Commissioner. This change affords greater flexibility in view of the digital mapping software and other related resources available to different schools.

Section 220.10(k) was clarified to note that, upon receipt of an application from a business to participate in the START-UP NY Program, the Commissioner may approve the application anytime after receipt; if the Commissioner approves the application, the business applicant is deemed accepted into the START-UP NY Program and can locate to the Sponsor's Tax-Free NY Area. If the Commissioner does not reject the application within 60 days, the business applicant is deemed accepted into the Program.

COSTS:

I. Costs to private regulated parties (the business applicants): None. The proposed regulation will not impose any additional costs to eligible business applicants.

II. Costs to the regulating agency for the implementation and continued administration of the rule: None.

III. Costs to the State government: None.

IV. Costs to local governments: None.

LOCAL GOVERNMENT MANDATES:

The rule establishes certain property tax benefits for businesses locating in Tax-Free NY Areas that may impact local governments. However, as described in the accompanying statement in lieu of a regulatory flexibility analysis for small businesses and local governments, the program is expected to have a net-positive impact on local government.

PAPERWORK:

The rule establishes application and eligibility requirements for Tax-Free NY Areas proposed by universities and colleges, and participating businesses. These regulations establish paperwork burdens that include materials to be submitted as part of applications, documents that must be submitted to maintain eligibility, and information that must be retained for auditing purposes.

DUPLICATION:

The proposed rule will create a new section of the existing regulations of the Commissioner of Economic Development, Part 220 of 5 NYCRR. Accordingly, there is no risk of duplication in the adoption of the proposed rule.

ALTERNATIVES:

No alternatives were considered in regard to creating a new regulation in response to the statutory requirement. The regulation implements the statutory requirements of the START-UP NY program regarding the application process for creation of Tax-Free NY Areas and certification as an eligible business. This action is necessary in order to clarify program participation requirements and is required by the legislation establishing the START-UP NY program.

FEDERAL STANDARDS:

There are no federal standards applicable to the START-UP NY program; it is purely a State program that offers tax benefits to eligible businesses and their employees. Therefore, the proposed rule does not exceed any federal standard.

COMPLIANCE SCHEDULE:

The affected State agency (Department of Economic Development) and the business applicants will be able to achieve compliance with the regulation as soon as it is implemented.

Regulatory Flexibility Analysis

Participation in the START-UP NY program is entirely at the discretion of qualifying business that may choose to locate in Tax-Free NY Areas. Neither statute nor the proposed regulations impose any obligation on any business entity to participate in the program. Rather than impose burdens on small business, the program is designed to provide substantial tax benefits to start-up businesses locating in New York, while providing protections to existing businesses against the threat of tax-privileged start-up companies locating in the same community. Local governments may not be able to collect tax revenues from businesses locating in certain Tax-Free NY Areas. However, the regulation is expected to have a net-positive impact on local governments in light of the substantial economic activity associated with businesses locating their facilities in these communities.

Because it is evident from the nature of the proposed rule that it will have a net-positive impact on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small business and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

The START-UP NY program is open to participation from any business that meets the eligibility requirements, and is organized as a corporation, partnership, limited liability company, or sole proprietorship. A business's decision to locate its facilities in a Tax-Free NY Area associated with a ru-

ral university or college would be no impediment to participation; in fact, START-UP NY allocates space for Tax-Free NY Areas specifically to the upstate region which contains many of New York's rural areas. Furthermore, START-UP NY specifically calls for the balanced allocation of space for Tax-Free NY Areas between eligible rural, urban, and suburban areas in the state. Thus, the regulation will not have a substantial adverse economic impact on rural areas, and instead has the potential to generate significant economic activity in upstate rural areas designated as Tax-Free NY Areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The regulation establishes procedures and standards for the administration of the START-UP NY program. START-UP NY creates tax-free areas designed to attract innovative start-ups and high-tech industries to New York so as to stimulate economic activity and create jobs. The regulation will not have a substantial adverse impact on jobs and employment opportunities; rather, the program is focused on creating jobs. Because it is evident from the nature of the rulemaking that it will have either no impact or a positive impact on job and employment opportunities, no further affirmative 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.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State Common Core Learning Standards (CCLS)

I.D. No. EDU-44-14-00019-EP
Filing No. 891
Filing Date: 2014-10-21
Effective Date: 2014-10-21

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

Proposed Action: Amendment of section 100.5(g)(1)(i) 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)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Regents policy to provide, at the local school district's discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015, and August 2015 examination administrations.

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 January 12-13, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the February meeting, would be January 28, 2015, 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 to ensure that school districts and students are given sufficient notice to prepare for and timely implement in the 2014-2015 school year the provision providing, at the local school district's discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015, and August 2015 examination administrations.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the January 12-13, 2015 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: New York State Common Core Learning Standards (CCLS).

Purpose: To provide additional opportunities for students to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core ELA examination at the January 2015, June 2015 and August 2015 test administrations.

Text of emergency/proposed rule: Subparagraph (i) of paragraph (1) of subdivision (g) of section 100.5 of the Regulations of the Commissioner is amended, effective October 21, 2014, as follows:

(i) English.

(a) Students who first enter grade 9 in September 2013 and thereafter shall meet the English requirement for graduation in clause (a)(5)(i)(a) of this section by passing the Regents examination in English language arts (common core) or an approved alternative pursuant to section 100.2(f) of this Part.

(b) Students who first enter grade 9 prior to September 2013 shall meet the English requirement for graduation in clause (a)(5)(i)(a) of this section by:

(1) successfully completing a course in English language arts (common core) and passing the Regents examination in English language arts (common core) or an approved alternative pursuant to section 100.2(f) of this Part; or

(2) successfully completing a course in English aligned to the 2005 Learning Standards and passing the Regents comprehensive examination in English or an approved alternative pursuant to section 100.2(f) of this Part; provided that for the January 2014, June 2014 [and], August 2014*, January 2015, June 2015, and August 2015* administrations only, students enrolled in English language arts (common core) courses may, at the discretion of the applicable school district, take the Regents comprehensive examination in English in addition to the Regents examination in English language arts (common core), and may meet such English requirement by passing either examination.

(c) . . .

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 January 18, 2015.

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 Wagner, Deputy Commissioner, Office of Curriculum, Assessment and Educational Technology, EBA Room 875, 89 Washington Ave., Albany, NY 12234, (518) 474-5915, email: NYSEDP12@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the State Education Department (SED), with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges SED with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Regents and the Commissioner to adopt rules and regulations to carry out laws regarding education and the functions and duties conferred on SED 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 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 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the 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 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 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.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Regents relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement.

3. NEEDS AND BENEFITS:

At their July 2013 meeting, the Board of Regents adopted by emergency action, effective July 30, 2013, a new Commissioner's Regulation § 100.5(g) to allow students to meet diploma requirements by passing Regents Examinations in English Language Arts and mathematics that are aligned to the New York State P-12 Common Core Learning Standards. § 100.5(g) was permanently adopted at the October 2013 Regents meeting. Included in the new regulation is a provision in § 100.5(g)(1)(i)(b)(2) that allows, at local discretion and for the June 2014 and August 2014 administrations only, students enrolled in Common Core English courses may, at local discretion, take the Regents Comprehensive Examination in English (2005 Learning Standards) in addition to the Regents Examination in ELA (Common Core) and may meet the English requirement for graduation by passing either examination. In November 2013, the Regents adopted an emergency amendment to that regulation to include the January 2014 administration as well.

The proposed amendment would extend that flexibility to the January, June and August 2015 administrations.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

(d) Costs to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment is necessary to implement requirements for transitioning to Common Core English Language Arts (ELA) examinations, and does not impose any costs on school districts or charter schools. The proposed amendment implements Regents policy to provide, at the local school district's discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to implement requirements for transitioning to Common Core English Language Arts (ELA) examinations, and does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment is implements Regents policy to provide, at the local school district's discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

6. PAPERWORK:

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

7. DUPLICATION:

The rule does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

There are no significant alternatives to the rule and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to implement requirements for transitioning to Common Core ELA examinations, and does not impose any additional compliance requirements or costs on school districts or charter schools. It is anticipated regulated parties will be able to achieve compliance with the rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to implement requirements for transitioning to the New York State Common Core English Language Arts (ELA) examinations. The proposed amendment implements Regents policy to provide, at the local school district's discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

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. 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 689 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 does not impose any additional compliance requirements on school districts and charter schools. The proposed amendment implements Regents policy to provide, at local discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment is necessary to implement requirements for transitioning to Common Core English Language Arts (ELA) examinations, and does not impose any costs on school districts or charter schools. The proposed amendment implements Regents policy to provide, at the local school district's discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements on school districts or charter schools. Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement requirements for transitioning to Common Core English Language Arts (ELA) examinations, and does not impose any costs or compliance requirements on school districts or charter schools. The proposed amendment implements Regents policy to provide, at local discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the rule 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 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 long-range Regents policy providing for a transition to the New York State Common Core Learning Standards (CCLS) adopted at the January 2011 Regents meeting. 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 689 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 does not impose any additional compliance requirements on school districts and charter schools. The proposed amendment implements Regents policy to provide, at local discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

3. COMPLIANCE COSTS:

The proposed amendment is necessary to implement requirements for transitioning to Common Core English Language Arts (ELA) examinations, and does not impose any costs on school districts or charter schools. The proposed amendment implements Regents policy to provide, at the local school district's discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement requirements for transitioning to Common Core English Language Arts (ELA) examinations, and does not impose any costs or compliance requirements on school districts or charter schools. The proposed amendment implements Regents policy to provide, at local discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

Because the Regents policy upon which the proposed amendment is based applies to all school districts and BOCES 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 providing for a transition to the New York State Common Core Learning Standards (CCLS) adopted at the January 2011 Regents meeting. 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 implement requirements for transitioning to the New York State Common Core English Language Arts (ELA) examinations. The proposed amendment implements Regents policy to provide, at the local school district's discretion, additional opportunities for students enrolled in Common Core English Language Arts courses to meet diploma requirements by passing either the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2015, June 2015 and August 2015 examination administrations.

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

Duration of Competition in High School Athletics

I.D. No. EDU-44-14-00024-EP
Filing No. 893
Filing Date: 2014-10-21
Effective Date: 2014-10-21

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

Proposed Action: Amendment of section 135.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 803(not subdivided), 3204(2) and (3)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to clarify when a student's eligibility for senior high school athletic competition may be extended because of illness or accident, as set forth in Commissioner's Regulations § 135.4(c)(7)(ii)(b)(1)(i). The proposed amendment provides that an extension may be granted for a student's illness or accident.

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 January 12-13, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the January meeting, would be January 28, 2015, the date a Notice of Adoption would be published in the State Register. However, schools and affected students need to know now the criteria for granting an extension for illness or accident so that eligible students may participate in senior high school athletic competition during the Fall season of the 2014-2015 school year.

Emergency action is therefore necessary for the preservation of the general welfare to immediately adopt the proposed amendment to clarify when a student's eligibility for senior high school athletic competition may be extended because of illness or accident, so that school districts may determine the eligibility of affected students and allow for participation of eligible students in senior high school athletic competition during the Fall season of the 2014-2015 school year.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the January 12-13, 2015 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: Duration of competition in high school athletics.

Purpose: Clarifies when a student's eligibility for senior high school athletic competition may be extended for illness or accident.

Text of emergency/proposed rule: Subclause (1) of clause (b) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended, effective October 21, 2014, as follows:

(1) Duration of competition. A pupil shall be eligible for senior high school athletic competition in a sport during each of four consecutive seasons of such sport commencing with the pupil's entry into the ninth grade and prior to graduation, except as otherwise provided in this subclause, or except as authorized by a waiver granted under clause (d) of this subparagraph to a student with a disability. If a board of education has adopted a policy, pursuant to subclause (a)(4) of this subparagraph, to permit pupils in the seventh and eighth grades to compete in senior high school athletic competition, such pupils shall be eligible for competition during five consecutive seasons of a sport commencing with the pupil's entry into the eighth grade, or six consecutive seasons of a sport commencing with the pupil's entry into the seventh grade. A pupil enters competition in a given year when the pupil is a member of the team in the sport involved, and that team has completed at least one contest. A pupil shall be eligible for interschool competition in grades 9, 10, 11 and 12 until the last day of the school year in which he or she attains the age of 19, except as otherwise provided in subclause (a)(4) or clause (d) of this subparagraph, or in this subclause. The eligibility for competition of a pupil who has not attained the age of 19 years prior to July 1st may be extended under the following circumstances.

(i) If sufficient evidence is presented by the chief school officer to the section to show that the pupil's failure to enter competition

during one or more seasons of a sport was caused by illness[,] *or* accident [, or similar circumstances beyond the control of the student], such pupil's eligibility shall be extended accordingly in that sport. In order to be deemed sufficient, the evidence must include documentation showing that as a direct result of the illness[,] *or* accident [or other circumstance beyond the control of the student], the pupil will be required to attend school for one or more additional semesters in order to graduate.

(ii) . . .

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 January 18, 2015.

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 Wagner, Deputy Commissioner, Office of Curriculum, Assessment and Educational Technology, EBA Room 875, 89 Washington Ave., Albany, NY 12234, (518) 474-5915, 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 charges the Department with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Board of 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 sections 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.

Education Law section 803 provides the Board of Regents with overall authority over physical education instruction in schools.

Education Law section 3204(2) and (3) relate to compulsory education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to the age and four-year duration of competition limitations for athletic competition.

3. NEEDS AND BENEFITS:

Commissioner's Regulation section 135.4(c)(7)(ii)(b)(1), establishes the parameters for participation in senior high school interschool athletic competition. The duration of competition rule limits the participation of pupils in high school athletic competition to four consecutive seasons commencing with the pupil's entry into the ninth grade and prior to graduation. A request for an extension of duration of competition for a pupil's failure to enter competition during one or more seasons may be granted, only if sufficient evidence demonstrates that the pupil's failure to enter competition during one or more seasons was directly caused by illness, accident, or similar circumstances beyond the control of the student.

Department guidance indicates that the existing language providing for an extension upon evidence that the student's participation was impacted by "similar circumstances beyond the control of the student" is limited to circumstances related to such illness or accident. However, confusion continues to exist among school districts, students and parents. This regulatory amendment is necessary to provide clarity to the field regarding the circumstances under which a duration of competition extension may be granted. The proposed amendment provides that an extension may be granted if sufficient evidence is presented to show that the pupil's failure to enter competition during one or more seasons of a sport was caused illness or accident. Such clarification is intended to ensure safe and equitable competition.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

(d) Costs to the regulating agency for implementation and 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, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident.

6. PAPERWORK:

This proposed amendment does not impose any additional paperwork requirements, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment is necessary to clarify when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident. There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date. This proposed amendment does not impose any costs or compliance requirements, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident. The proposed amendment 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 Government:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 school districts within the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any costs, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any technological requirements or costs on school districts.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional costs or compliance requirements on school districts, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident. Commissioner's Regulation section 135.4(c)(7)(ii)(b)(1), establishes the parameters for participation in senior high school interschool athletic competition. The duration of competition rule limits the participation of pupils in high school athletic competition to four consecutive seasons commencing with the pupil's entry into the ninth grade and prior to graduation. A request for an extension of duration of competition for a pupil's failure to enter competition during one or more seasons may be granted, only if sufficient evidence demonstrates that the pupil's failure to enter competition during one or more seasons was directly caused by illness, accident, or similar circumstances beyond the control of the student.

Department guidance indicates that the existing language providing for an extension upon evidence that the student's participation was impacted by "similar circumstances beyond the control of the student" is limited to circumstances related to such illness or accident. However, confusion continues to exist among school districts, students and parents. This regulatory amendment is necessary to provide clarity to the field regarding the circumstances under which a duration of competition extension may be granted. The proposed amendment provides that an extension may be granted if sufficient evidence is presented to show that the pupil's failure

to enter competition during one or more seasons of a sport was caused illness or accident. Such clarification is intended to ensure safe and equitable competition.

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.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all 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 does not impose any additional reporting, recordkeeping or other compliance requirements on school districts in rural areas, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident. The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on school districts in rural areas, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional costs or compliance requirements on school districts in rural areas, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident. Commissioner's Regulation section 135.4(c)(7)(ii)(b)(1), establishes the parameters for participation in senior high school interschool athletic competition. The duration of competition rule limits the participation of pupils in high school athletic competition to four consecutive seasons commencing with the pupil's entry into the ninth grade and prior to graduation. A request for an extension of duration of competition for a pupil's failure to enter competition during one or more seasons may be granted, only if sufficient evidence demonstrates that the pupil's failure to enter competition during one or more seasons was directly caused by illness, accident, or similar circumstances beyond the control of the student.

Department guidance indicates that the existing language providing for an extension upon evidence that the student's participation was impacted by "similar circumstances beyond the control of the student" is limited to circumstances related to such illness or accident. However, confusion continues to exist among school districts, students and parents. This regulatory amendment is necessary to provide clarity to the field regarding the circumstances under which a duration of competition extension may be granted. The proposed amendment provides that an extension may be granted if sufficient evidence is presented to show that the pupil's failure to enter competition during one or more seasons of a sport was caused illness or accident. Such clarification is intended to ensure safe and equitable competition.

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.

Job Impact Statement

The proposed amendment merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness or accident. 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 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 Process on Regents Exams Passing Score for English Language Learners (ELLs)

I.D. No. EDU-44-14-00026-EP
Filing No. 899
Filing Date: 2014-10-21
Effective Date: 2014-10-21

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

Proposed Action: Amendment of section 100.5(d)(7) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 215 (not subdivided), 305(1), (2), 308 (not subdivided), 309 (not subdivided), 2117(1), 3204(2), (2-a), (3) and (6)

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

Specific reasons underlying the finding of necessity: The proposed amendment would create an additional English Language Learner (ELL) specific pathway to graduation for qualifying ELL students who are otherwise eligible to graduate but for their score on the English Language Arts (ELA) Regents examination. Under the proposed amendment, ELLs who entered the United States in 9th grade or above in the 2010-11 school year and thereafter, and who score between 55-61 on the Regents Exam in English after two attempts at attaining a score of 65 or above, are also eligible to receive a local diploma via an appeal process if they:

- Successfully appeal the Regents Exam in English AND score at least 65 on each of the four remaining required Regents exams; OR
- Successfully appeal the Regents Exam in English AND score at least 65 on three other required Regents exams AND score between 62 to 64 on one other required Regents exam and successfully appeal that exam.

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 January 12-13, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the January meeting, would be January 28, 2015, the date a Notice of Adoption would be published in the State Register. However, in order to provide for implementation in the 2014-2015 school year, school districts and affected students need to know now what the criteria will be for obtaining a local diploma under the new ELL specific pathway to graduation.

Emergency action is therefore necessary for the preservation of the general welfare to immediately create an additional ELL specific pathway to graduation for qualifying students who are otherwise eligible to graduate but for their score on the English Language Arts (ELA) Regents examination, so that school districts and such students are given sufficient notice to prepare for and timely implement such graduation pathway in the 2014-2015 school year.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the January 12-13, 2015 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: Appeals process on Regents exams passing score for English Language Learners (ELLs).

Purpose: To allow ELLs who enter the United States in 9th grade or above in the 2010-11 school year and thereafter to graduate with a Local Diploma if they score between 55-61 on the Regents Exam in English and meet all other conditions for appeal of a Regents score.

Text of emergency/proposed rule: Paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective October 21, 2014, as follows:

(7) Appeals process on Regents examinations passing score to meet Regents diploma requirements.

(i) School districts shall provide unlimited opportunities for all students to retake required Regents examinations to improve their scores.

(a) A student who first enters grade nine in September 2005 or thereafter and who fails, after at least two attempts, to attain a score of 65 or above on a required Regents examination for graduation shall be given an opportunity to appeal such score in accordance with the provisions of this paragraph, provided that no student may appeal his or her score on

more than two of the five required Regents examinations and provided further that the student:

[(a)] *(1)* has scored within three points of the 65 passing score on the required Regents examination under appeal and has attained at least a 65 course average in the subject area of the Regents examination under appeal;

[(b)] *(2)* provides evidence that he or she has received academic intervention services by the school in the subject area of the Regents examination under appeal;

[(c)] *(3)* has an attendance rate of at least 95 percent for the school year during which the student last took the required Regents examination under appeal;

[(d)] *(4)* has attained a course average in the subject area of the Regents examination under appeal that meets or exceeds the required passing grade by the school and is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year; and

[(e)] *(5)* is recommended for an exemption to the passing score on the required Regents examination under appeal by his or her teacher or department chairperson in the subject area of such examination.

(b) A student who first enters school in the United States (the 50 States and the District of Columbia) in grade nine, ten, eleven or twelve in September 2010 or thereafter, is identified as an English Language Leaner pursuant to Part 154 of this Title, and fails, after at least two attempts, to attain a score of 65 or above on the Regents comprehensive examination in English or the Regents examination in English language arts (common core), as required by this section for graduation, shall be given an opportunity to appeal such score in accordance with the provisions of this paragraph, provided that no such student may appeal his or her score on more than two of the five required Regents examinations and provided further that the student:

(1) has scored between 55 and 61 on the required Regents comprehensive examination in English or Regents examination in English language arts (common core) under appeal;

(2) provides evidence that he or she has received academic intervention services by the school in English language arts;

(3) has an attendance rate of at least 95 percent for the school year during which the student last took the required Regents comprehensive examination in English or Regents examination in English language arts (common core);

(4) has attained a course average in English language arts that meets or exceeds the required passing grade by the school and is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year; and

(5) is recommended for an exemption to the passing score on the required Regents comprehensive examination in English or Regents examination in English language arts (common core) by his or her teacher or department chairperson in English language arts.

[(ii)] *(c)* An appeal may be initiated by the student, the student's parent or guardian, or the student's teacher, and shall be submitted in a form prescribed by the commissioner to the student's school principal.

[(iii)] *(d)* The school principal shall chair a standing committee comprised of three teachers (not to include the student's teacher in the subject area of the Regents examination under appeal) and two school administrators (one of whom shall be the school principal). The standing committee shall review an appeal within 10 school days of its receipt and make a recommendation to the school superintendent or, in the City School District of the City of New York, to the chancellor of the city school district or his/her designee, to accept or deny the appeal. The standing committee may interview the teacher or department chairperson who recommended the appeal, and may also interview the student making the appeal to determine that he or she has demonstrated the knowledge and skills required under the State learning standards in the subject area in question.

[(iv)] *(e)* The school superintendent or, in the City School District of the City of New York, the chancellor of the city school district or his/her designee, shall make a final determination to accept or deny the appeal. The school superintendent or chancellor or chancellor's designee may interview the student making the appeal to determine that the student has demonstrated the knowledge and skills required under the State learning standards in the subject area in question.

[(v)] *(f)* Diplomas.

(1) A student whose appeal is accepted for one required Regents examination *pursuant to clause (a) of subparagraph (i) of this paragraph*, and who has attained a passing score of 65 or above on each of the four remaining required Regents examinations, shall earn a Regents diploma.

(2) A student whose appeal is accepted for two required Regents examinations *pursuant to clause (a) of subparagraph (i) of this paragraph*, and who has attained a passing score of 65 or above on each of the three remaining required Regent examinations, shall earn a local diploma.

(3) A student whose appeal is accepted for the required Regents comprehensive examination in English or Regents examination in English language arts (common core) pursuant to clause (b) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the four remaining required Regents examinations, shall earn a local diploma.

(4) A student whose appeal is accepted for the required Regents comprehensive examination in English or Regents examination in English language arts (common core) pursuant to clause (b) of subparagraph (i) of this paragraph and for one other required Regents examination pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the three remaining required Regents examinations shall earn a local diploma.

[(vi)] *(g)* Each school shall keep a record of all appeals received and granted and report this information to the State Education Department on a form prescribed by the commissioner. All school records relating to appeals of scores on required Regents examinations shall be made available for inspection by the State Education Department.

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 January 18, 2015.

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: Cosimo Tangorra, Jr., 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.

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

Education Law section 207 empowers the Regents and the Commissioner to adopt rules and regulations to carry out State laws regarding education and the functions and duties conferred on the State Education 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 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 215 authorizes the Regents and the Commissioner to require school districts to prepare and submit reports containing such information as they may prescribe.

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 execute all educational policies determined by the Regents.

Education Law section 2117(1) empowers the Regents and the Commissioner to require school districts to submit any information they deem appropriate.

Education Law section 3204(2) and (2-a) provide for instructional programs for pupils with limited English proficiency (LEP) to be conducted in accordance with regulations of the Commissioner. Education Law section 3204(3) authorizes the Commissioner to establish standards for the instruction of LEP children, and section 3204(6) requires the Commissioner to establish standards by regulation.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

NEEDS AND BENEFITS:

Federal civil rights and education laws, as well as federal court jurisprudence, require that English Language Learner (ELL) students must be provided with equal access to all school programs and services offered to non-ELL students, including access to programs required for graduation. Education Law section 3204 and Part 154 of the Commissioner's Regulations contain standards for educational services provided to ELLs in New York State to meet these federal obligations.

The proposed amendment is necessary to implement policy adopted by the Regents relating to ELL equal access to education, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act, Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

Over the past 10 years, New York State ELL student enrollment has increased by 20%. Currently in New York State, over 230,000 ELLs make up 8.9% of the total student population. While former ELLs generally achieve graduation rates equal to or above that of all non-ELLs, the graduation rate of current ELLs lagged well below that of non-ELLs. In June 2013, only 31.4% of ELLs graduated, compared to 74.9% of all students. Many of these ELLs were students who entered school in the United States for the first time on or after grade nine.

Throughout the process that resulted in the recent Regents action to amend Part 154 to add new Subparts 154-1 and 154-2 (EDU-27-14-00011-A; State Register, October 1, 2014), stakeholders raised concerns regarding the graduation rate of ELLs. While former ELLs generally achieve graduation rates almost equal to that of all non-ELLs, the graduation rate of current ELLs lags well below that of non-ELLs. In June 2013, only 31.4% of ELLs graduated, compared to 74.9% of all students. Many of the ELLs who are not graduating on time first entered school in the United States in high school. Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process. The proposed rule will make a Local Diploma available to those ELLs who score at least 55 on the Regents examination in English after two attempts to score a 65, and meet other existing appeals requirements that apply to ELLs and non-ELLs alike.

Section 100.5(d)(7) of the Commissioner's Regulations currently allows for all students, ELLs and non-ELLs, to be eligible to apply for the Local Diploma via appeal if they:

- Score 65+ on three Regents exams; AND
- Score 62-64 on two Regents exams.

Under the proposed amendment, ELLs who entered the United States in 9th grade or above in the 2010-11 school year and thereafter, and who score between 55-61 on the Regents Exam in English after two attempts at attaining a score of 65 or above, are also eligible to receive the Local Diploma via appeal if they:

- Successfully appeal the Regents Exam in English AND score at least 65 on each of the four remaining required Regents exams; OR
- Successfully appeal the Regents Exam in English AND score at least 65 on three other required Regents exams AND score between 62 to 64 on one other required Regents exam and successfully appeal that exam.

To be eligible to appeal a score on the Regents Exam in English, ELLs would also have to meet these conditions:

- The student has received academic intervention services in English language arts; AND
- The student has an attendance rate of at least 95 percent for the school year during which the student last took the Regents examination in English; AND
- The student has attained a course average in English language arts that meets or exceeds the required passing grade by the school and is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year; AND
- The student is recommended for an exemption to the passing score on the Regents examination by his or her teacher or department chairperson.

Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other Regents appeals. ELL students would remain eligible for the current appeals process as well.

COSTS:

(a) Costs to State government: The proposed amendment is necessary to ensure compliance with Education Law sections 3204 and 4403, Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, and the Equal Educational Opportunities Act of 1974 (EEOA) and does not impose any additional costs on State government, including the State Education Department, beyond those costs imposed by the statutes.

(b) Costs to local government: The proposed amendment will not impose any significant costs on local governments. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals.

Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. In the long term, the proposed amendment is expected to be a cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

(c) Costs to private regulated parties: none.

(d) Costs to regulating agency for implementation and continued administration of this rule: none.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon school districts. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other appeals of Regents examination scores. ELL students would remain eligible for the current appeals process as well.

PAPERWORK:

The proposed amendment will not require any additional paperwork beyond what is necessary to process a limited number of additional appeals for a local diploma from qualifying late entry ELLs who score a 55-61 on the Regents examination in English after two tries who meet other conditions for appeal. Appeals by ELLs under the proposed amendment would be subject to the existing requirement in section 100.5(d)(7) that each school keep a record of all appeals received and granted and report this information to Department on a form prescribed by the Commissioner. All school records relating to appeals of scores shall be made available for inspection by the Department.

DUPLICATION:

The proposed amendment is necessary to ensure compliance with Education Law sections 3204 and 4403, Title I and III of the ESEA, Title IV of the Civil Rights Act of 1964, and the EEOA and does not duplicate existing State or Federal requirements.

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

The proposed amendment is necessary to ensure compliance with Education Law sections 3204 and 4403, Title I and III of the ESEA, Title IV of the Civil Rights Act of 1964, and the EEOA. These laws require states and school districts to provide ELL students with appropriate services to overcome language barriers. In addition, federal jurisprudence in landmark cases such as Castañeda v. Pickard established standards to ensure compliance with EEOA. For example, the Castañeda standard mandates that programs for language-minority students must be (1) based on a sound educational theory, (2) implemented effectively with sufficient resources and personnel, and (3) evaluated to determine whether they are effective in helping students overcome language barriers.

COMPLIANCE SCHEDULE:

It is anticipated that school districts and BOCES will be able to achieve compliance with the proposed amendment by its effective date. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements, and is necessary to implement policy adopted by the Regents relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education

Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). 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 steps 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 689 public school districts and 37 boards of cooperative educational services (BOCES) in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on local governments. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment will not impose any significant costs on school districts or BOCES. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. The proposed amendment is expected to be a long-term cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in the state.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILTY:

The proposed amendment does not impose any additional technological requirements on school districts. Economic feasibility is addressed above under compliance costs.

6. MINIMIZE ADVERSE IMPACT:

The proposed amendment implements policy adopted by the Board of Regents relating to ELL equal access to education, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act, Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

The proposed amendment does not impose any additional compliance requirements or significant costs upon school districts. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other appeals of Regents examination scores. ELL students would remain eligible for the current appeals process as well. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. The proposed amendment is expected to be a long-term cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in the State.

Federal civil rights and education laws, as well as federal court jurisprudence, require that ELL students must be provided with equal access to all school programs and services offered to non-ELL students. Education Law section 3204 and Part 154 of the Regulations of the Commissioner (CR Part 154) contain standards for educational services provided to ELLs in New York State in order to meet these federal obligations.

Over the past 10 years, New York State ELL student enrollment has increased by 20%. Currently in New York State, over 230,000 ELLs make up 8.9% of the total student population. While former ELLs generally achieve graduation rates equal to or above that of all non-ELLs, the graduation rate of current ELLs lagged well below that of non-ELLs. In June 2013, only 31.4% of ELLs graduated, compared to 74.9% of all students. Many of these ELLs were students who entered school in the United States for the first time on or after grade nine.

Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process. The proposed amendment will expand access to the Local Diploma to this precise group of ELLs who are in a position to benefit from the opportunity to obtain postsecondary education or enter a career with a high school diploma. Because ELLs by definition are not yet fluent in English, this alternate pathway to graduation facilitates equal access to the Local Diploma. The proposed amendment minimizes the adverse impact of denying ELLs who satisfy all other conditions for appeal the ability to attain a high school diploma on account of their lack of fluency in English.

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 improving graduation outcomes for students who are English Language Learners. 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

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and boards of cooperative educational services (BOCES) 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 does not impose any additional reporting, recordkeeping or other compliance requirements on school districts and BOCES located in rural areas. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals.

3. COMPLIANCE COSTS:

The proposed amendment will not impose any significant costs on school districts or BOCES located in rural areas. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. The proposed amendment is expected to be a long-term cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in the State.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements policy adopted by the Board of

Regents relating to ELL equal access to education, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act, Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

The proposed amendment does not impose any additional compliance requirements or significant costs upon school districts or BOCES located in rural areas. An appeals process and criteria are already in place for students who score 65+ on three Regents exam and score 62-64 on two Regents exams, and the proposed amendment would merely expand the eligibility to a limited subset of qualifying late entry ELLs who score between 55-61 on the Regents examination in English after two tries and meet all other conditions for appeal. Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other appeals of Regents examination scores. ELL students would remain eligible for the current appeals process as well. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. The proposed amendment is expected to be a long-term cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in the State.

Federal civil rights and education laws, as well as federal court jurisprudence, require that ELL students must be provided with equal access to all school programs and services offered to non-ELL students. Education Law section 3204 and Part 154 of the Regulations of the Commissioner (CR Part 154) contain standards for educational services provided to ELLs in New York State in order to meet these federal obligations.

Over the past 10 years, New York State ELL student enrollment has increased by 20%. Currently in New York State, over 230,000 ELLs make up 8.9% of the total student population. While former ELLs generally achieve graduation rates equal to or above that of all non-ELLs, the graduation rate of current ELLs lagged well below that of non-ELLs. In June 2013, only 31.4% of ELLs graduated, compared to 74.9% of all students. Many of these ELLs were students who entered school in the United States for the first time on or after grade nine.

Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process. The proposed amendment will expand access to the Local Diploma to this precise group of ELLs who are in a position to benefit from the opportunity to obtain postsecondary education or enter a career with a high school diploma. Because ELLs by definition are not yet fluent in English, this alternate pathway to graduation facilitates equal access to the Local Diploma. The proposed amendment minimizes the adverse impact of denying ELLs who satisfy all other conditions for appeal the ability to attain a high school diploma on account of their lack of fluency in English.

The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements, and is necessary to implement policy adopted by the Regents relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). Because this policy is applicable throughout the State, it was not possible to provide for a lesser standard or an exemption for school districts and BOCES in rural areas.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule 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 improving graduation outcomes for students who are English Language Learners. 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.

Job Impact Statement

The proposed amendment creates an additional English Language Learner (ELL) specific pathway to graduation for qualifying students by allowing ELLs who enter the United States in 9th grade or above in the 2010-11 school year and thereafter to graduate with a Local Diploma if they score between 55-61 on the Regents Exam in English and meet all other conditions for appeal of a Regents score.

Over the past 10 years, New York State ELL student enrollment has increased by 20%. Currently in New York State, over 230,000 ELLs make up 8.9% of the total student population. While former ELLs generally achieve graduation rates equal to or above that of all non-ELLs, the graduation rate of current ELLs lagged well below that of non-ELLs. In June 2013, only 31.4% of ELLs graduated, compared to 74.9% of all students. Many of these ELLs were students who entered school in the United States for the first time on or after grade nine.

Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process. As a result, the Department determined that it would be beneficial to consider the proposed pathway to graduation for qualifying ELLs who enter United States schools in 9th grade or above.

Commissioners Regulations Part 100 currently allows for all students, ELLs and non-ELLs, to apply for the Local Diploma via appeal if they: Score 65+ on three Regents exams; AND Score 62-64 on two Regents exams. In addition, if these rules are adopted, late arriving ELLs who enter United States schools for the first time in grade nine or above in the 2010-11 school year and thereafter would be able to use the appeal process to meet the graduation assessment requirement in English Language Arts once they take the examination at least two times and score at least 55 on the examination.

The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements, and is necessary to implement policy adopted by the Regents relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). The proposed amendment will not have a substantial adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact, or a positive impact, on jobs or employment opportunities, 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 ADOPTION

Flexibility Relating to Teacher Performance Assessment (edTPA)

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

Filing No. 898

Filing Date: 2014-10-21

Effective Date: 2014-11-05

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

Action taken: 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)

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 either: (1) taking and passing the ATS-W after receipt of his/her failing score on the edTPA and prior to June 30, 2015, or (2) if the candidate had previously passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the edTPA prior to June 30, 2015, the candidate will be issued an initial certificate (this applies to Transitional B program candidates who apply for an initial certificate as well).

Text or summary was published in the May 14, 2014 issue of the Register, I.D. No. EDU-19-14-00021-EP.

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

Revised rule making(s) were previously published in the State Register on August 13, 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

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 Emergency Adoption and Revised Rule Making in the State Register on August 13, 2014, the State Education Department (SED) received the following comment:

COMMENT: The commenter expressed the need to give teaching candidates the option of gaining certification until March 1, 2016 by passing either the four new certification exams or the three former ones. The commenter suggests that SED did not give colleges and students nearly enough time to prepare for the tests and that in turn, teacher candidates did not have adequate time to prepare for the tests.

RESPONSE: Since November of 2009, the Board of Regents and NYSED have been working on the development and implementation of new assessments for teacher certification. In fact, faculty from teacher preparation programs have been working with NYSED in the development of these new assessments and their implementation since 2010, and information about the new assessments, also available since 2010, is on the NYSED and NYSTCE websites and was distributed separately to each of the teacher preparation programs. A complete timeline for the new certification examination requirements can be found in Attachment C of the September Regents item for this regulation, which can be found on the Department's website at http://www.regents.nysed.gov/meetings/2014/September2014/914brca2.pdf. Teacher preparation programs have been on notice of these requirements for more than five years. NYSED has posted information on these new certification examinations on its website and teacher preparation programs have been involved in the development of these examinations. However, it is ultimately the responsibility of teacher preparation program to ensure that their candidates are aware of the State's certification requirements, and to prepare their candidates to meet such certification requirements.

Moreover, in February 2013, the Department pushed back the implementation date on the new examinations for an additional year from May 1, 2013 through May 1, 2014; which was nearly five years after the Department began making information available to candidates and programs about the new certification examinations. In addition, in an effort to address the concerns raised by the field on the edTPA, while at the same time recognizing the previous extensions and investments made in this exam, the Department provided a "safety net" for candidates taking the edTPA, which allows any candidate who applies for and meets the requirements of an initial certificate on or before June 30, 2015, except he/she fails the edTPA to either: (1) take and pass the ATS-W after receipt of his/her failing score on the edTPA and prior to June 30, 2015, or (2) if the candidate had previously passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the edTPA prior to June 30, 2015, the candidate will be issued an initial certificate.

The Department has also initiated strong support systems to ensure that each preparation programs had the information they needed to successfully prepare its candidates. In addition to various conferences, webinars, and presentations, the Department provided approximately $11.5 million dollars to City University of New York (CUNY), State University of New York (SUNY), and independent colleges for faculty professional development. As a result of this work hundreds meetings and workshops have been held to ensure that faculty had all the information they needed to successfully prepare their candidates for the new certification assessments. This five year implementation timeline, combined with the strong financial support for teacher preparation programs ensured that the programs would be ready to adequately prepare teacher candidates for the new certification exams, and in turn, for teacher candidates to prepare for the new exams.

COMMENT: The commenter states that Governor Cuomo and legislators reached an agreement to hold teachers harmless from Common Core having a negative impact on their evaluations and careers and requests the same hold harmless provisions for teaching certification candidates. He states that certification exams for teacher candidates are similar to evaluations of current teachers, and that teacher candidates should also be held harmless.

RESPONSE: The Annual Professional Performance Review (APPR) is a collectively bargained annual evaluation system of teacher effectiveness based on multiple measures, including student growth on State assessments. The Governor's Program Bill No. 56, which has not yet been signed into law, provides a safety net calculation for the 2013-2014 and 2014-2015 school years for educators who were rated ineffective or developing and whose rating relied on one or more State assessments aligned to the Common core. If the educator's safety net calculation is higher than their evaluation rating calculated pursuant to Education Law § 3012-c, the bill provides that the rating cannot be used for termination decisions. This legislation seeks to address any negative consequences for teachers and principals whose evaluation ratings are ineffective or developing in the 2013-14 and/or 2014-15 school years based on student achievement on Common Core State tests.

SED believes that the teacher certification exams are different. They measure a candidate's readiness to enter a classroom and be an effective classroom teacher by instructing students and enhancing student learning and achievement. Since the creation of New York's Common Core Learning Standards, students are expected are being held to a higher academic standard. As the standards for P-12 students rise, teachers, in turn, must also have the minimum knowledge, skills and abilities needed to educate their students when they enter the classroom. Moreover, the new and revised certification examinations measure more than just a candidate's knowledge of the CCLS, including a candidate's knowledge of literacy, their performance in the classroom and ability to teach kids, their knowledge of different student populations (SWD, ELL) and their knowledge of the content mater they are seeking to teach. These are essential skills for any teacher entering the classroom.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Pathways to Graduation

I.D. No. EDU-44-14-00025-P

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

Proposed Action: Amendment of sections 100.2 and 100.5 of Title 8 NYCRR.

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

Subject: Pathways to Graduation.

Purpose: To establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs, and to prescribe new unit of credit and examination requirements for social studies.

Substance of proposed rule (Full text is posted at the following State website:http://www.regents.nysed.gov/meetings/2014/October2014/1014bra4.pdf): The Commissioner of Education proposes to amend sections 100.2 and 100.5 of the Commissioner's Regulations. The proposed amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs. The amendment also prescribes new unit of credit and examination requirements for social studies.

The following is a summary of the substantive provisions of the proposed rule.

Subdivision (f) of section 100.2 of the Commissioner's Regulations is amended to provide that with the approval of the Commissioner, pathway assessments which measure an equivalent level of knowledge and skill may be substituted for the assessments specified in Part 100 of the Commissioner's Regulations. Any examination that is used to satisfy the pathway assessment graduation requirements, other than those specifically enumerated in section 100.2(mm) relating to pathway assessments in career and technical education (CTE) and in the arts, shall meet the conditions and criteria set forth in section 100.2(f)(1)(i) through (vi) relating to alternative assessments.

A new subdivision (mm) of section 100.2 is added to establish criteria for pathway assessments in CTE and in the Arts. Except as provided in section 100.2(f), students who have passed four required Regents examinations or department-approved alternative assessments in each of the areas of English, mathematics, science, and social studies pursuant to section 100.5 and who are otherwise eligible to receive a high school diploma in June 2015 and thereafter, may meet the fifth assessment requirement for graduation pursuant to section 100.5 by passing a fifth pathway assessment in CTE or in the arts, that is approved by the Commissioner pursuant to the following conditions and criteria:

(1) pathway assessments shall measure student progress on the State learning standards for their respective content area(s) at a level of rigor

equivalent to a Regents examination or alternative assessment approved pursuant to section 100.2(f);

(2) pathway assessments shall be recognized or accepted by postsecondary institutions, experts in the field, and/or employers in areas related to the assessment;

(3) pathway assessments shall be aligned with existing knowledge and practice in the field(s) related to their respective content area(s) and shall be reviewed at least every five years and updated as necessary;

(4) pathway assessments shall be consistent with technical criteria for validity, reliability, and fairness in testing;

(5) pathway assessments shall be developed by an entity other than a local school or school district;

(6) pathway assessments shall be available for use by any school or school district in New York State; and

(7) pathway assessments shall be administered under secure conditions approved by the Commissioner.

A new clause (f) is added to section 100.5(a)(5)(i) to establish requirements for pathway assessments. Students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma in June 2015 and thereafter, must also pass any one of the following assessments:

(1) one additional social studies Regents examination or department-approved alternative; or

(2) one additional Regents examination in a different course in mathematics or science or a department-approved alternative; or

(3) a pathway assessment (e.g., languages other than English) approved by the Commissioner in accordance with section 100.2(f)(2); or

(4) a career and technical education (CTE) pathway assessment, approved by the Commissioner in accordance with section 100.2(mm), following successful completion of a CTE program approved pursuant to paragraph (6) of subdivision (d) of this section; or

(5) an arts pathway assessment approved by the Commissioner in accordance with section 100.2(mm).

Section 100.5(a)(6) is amended to provide that all students first entering grade nine in September 2016 and thereafter shall earn four units of credit in social studies. Such requirement shall include:

(1) one unit of credit in American history;

(2) one half unit of credit in participation in government and one half unit of credit in economics; and

(3) two units of credit in global history and geography; or

(4) the equivalent of (1) through (3), as approved by the local public school superintendent or his or her designee or by the chief administrative officer of a registered nonpublic high school.

Section 100.5(b)(7)(iv) is amended to prescribe four units of credit in Social Studies as follows:

for students first entering grade nine in September 2016 and thereafter:

(1) one unit of credit in American history;

(2) two units of credit in global history and geography; and

(3) a half unit of credit in economics and a half unit of credit in participation in government; or

(4) the equivalent of (1) through (3), as approved by the local public school superintendent or his or her designee or by the chief administrative officer of a registered nonpublic high school; and

(5) the assessments as required by section 100.5(a)(5)(i).

Section 100.5(d)(5) and 100.5(d)(6), relating to transfer credit, are amended to provide that for certain students who first enter grade 11 in a registered New York State high school in the 2018-2019 school year and thereafter, and who first enter grade 12 in a registered New York State high school in the 2019-2020 school year and thereafter, the principal may exempt the student from the two units of credit requirement in global history and geography by substituting two units of credit in social studies.

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: Cosimo Tangorra, Jr., 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.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the State Education Department (SED), with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges SED with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Regents and the Commissioner to adopt rules and regulations to carry out laws regarding education and the functions and duties conferred on SED 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 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 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the 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 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 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.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Regents relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement.

3. NEEDS AND BENEFITS:

Over the past two years the Board of Regents has heard from a number of stakeholders in the education and business communities regarding the benefits and challenges of strengthening the graduation requirements for a high school Regents diploma. These discussions have led to a comprehensive review of the college- and career-readiness of our students, units of study requirements, and assessments of student learning, and support for creating multiple pathways towards college and career readiness, including pathways that utilize career-focused integrated courses and programs.

4+1 Pathway Option

The 4+1 pathway option would apply beginning with students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma in June 2015 and thereafter. The amendment would create graduation pathways assessments in the Humanities, STEM, Biliteracy (languages other than English [LOTE]), CTE and the Arts and would require that, for the fifth assessment required for graduation, such students pass any one of the following assessments:

(1) one additional social studies Regents examination or Department-approved alternative (Humanities Pathway); or

(2) one additional Regents examination in a different course in mathematics or science or a Department-approved alternative (STEM Pathway); or

(3) a pathway assessment approved by the Commissioner in accordance with § 100.2(f) of the Commissioner's regulations (which could include a Biliteracy [LOTE] Pathway); or

(4) a career and technical education (CTE) pathway assessment, approved by the Commissioner in accordance with proposed § 100.2(mm), following successful completion of a CTE program approved pursuant to § 100.5(d)(6) of the regulations (CTE Pathway); or

(5) an arts pathway assessment approved by the Commissioner in accordance with proposed § 100.2(mm).

In order to ensure that pathway assessments are of sufficient rigor, validity and reliability, the proposed regulations also establish conditions and criteria by which such assessments may be approved by the Commissioner.

The 4+1 pathway option would not change existing graduation course or credit requirements and students must continue to meet all current course and 22 units of credit requirements, even if they were to elect to take advantage of the 4+1 pathway option. However, existing regulations provide several areas of flexibility for meeting course and credit requirements through, for example, the availability of integrated CTE courses and independent study (see 8 NYCRR § 100.5[d][6] and [9]).

Social Studies

New York's Content Advisory Panel for social studies, consisting of a wide range of experts from the field, was formed in 2011 to advise the Department on suggested revisions to the New York State Social Studies Resource Guide with Core Curriculum to ensure alignment to the New

York State Common Core Learning Standards. The panel created the New York State K-12 Social Studies Framework, which was adopted by the Board of Regents at their April 2014 meeting. The Framework clearly delineates the courses of study as follows:

• Global History and Geography I (typically Grade 9) begins with the Paleolithic Era and continues to a period of Global Interactions from approximately 1400 to 1750.

• Global History and Geography II (typically Grade 10) begins with a snapshot of the world at 1750, incorporates the Enlightenment and Industrial Revolution, and continues to the present.

This two-unit sequence provides students with a comprehensive and rigorous course of study in global history and geography.

Since 2001, students entering grade 9 must pass the Regents examination in Global History and Geography or an approved alternative. However, there is no language in the regulations that states students must take the course of study that precedes this examination. The proposed amendment provides that:

• All students first entering grade nine in September 2016 and thereafter must earn four units of credit in social studies, which shall include two units of credit in global history and geography, in addition to the current requirements of one unit of credit in American history, one half unit of credit in participation in government and one half unit of credit in economics or their equivalent.

• For purposes of awarding transfer credit, the principal may exempt students who first enter a registered New York State high school in grade 11 or 12 in a registered New York State high school in the 2018-2019 or 2019-2020 school years respectively, and thereafter, from the two units of credit requirement in global history and geography and by substituting two units of credit in social studies.

• Students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma in June 2015 and thereafter, must also pass either (1) the Regents examination in United States history and government, or (2) the Regents examination in global history and geography (for students first entering grade nine prior to September 2016) or the Regents examination in global history and geography II (1750 to present) (for students first entering grade nine in September 2016 and thereafter).

• As described above, the fifth assessment required for graduation must be one of those specified in the pathway option.

Pathway assessments in Career and Technical Education or in the Arts

A new section 100.2(mm) is added to provide that students who have passed four required Regents examinations or department-approved alternative assessments in each of the areas of English, mathematics, science, and social studies and who are otherwise eligible to receive a high school diploma in June 2015 and thereafter, may meet the fifth assessment requirement for graduation by passing a fifth pathway assessment in career and technical education (CTE) or in the arts, that is approved by the commissioner pursuant to the following conditions and criteria. Pathways assessments shall:

(1) measure student progress on the State learning standards for their respective content area(s) at a level of rigor equivalent to a Regents examination or alternative assessment;

(2) be recognized or accepted by postsecondary institutions, experts in the field, and/or employers in areas related to the assessment;

(3) be aligned with existing knowledge and practice in the field(s) related to their respective content area(s) and shall be reviewed at least every five years and updated as necessary;

(4) be consistent with technical criteria for validity, reliability, and fairness in testing;

(5) be developed by an entity other than a local school or school district;

(6) be available for use by any school or school district in the State; and

(7) be administered under secure conditions approved by the Commissioner.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

(d) Costs to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment does not impose any additional costs on the State, school districts, charter schools or SED. The amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs. A number of school districts and BOCES already offer technical education programs that would meet the proposed pathway requirements. The amendment also prescribes new unit of credit and examination requirements for social studies.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs. The 4+1 pathway option would not change existing graduation course or credit requirements and students must continue to meet all current course and 22 units of credit requirements, even if they were to elect to take advantage of the 4+1 pathway option. However, existing regulations provide several areas of flexibility for meeting course and credit requirements through, for example, the availability of integrated CTE courses and independent study (see 8 NYCRR § 100.5[d][6] and [9]). A number of school districts and BOCES already offer technical education programs that would meet the proposed pathway requirements.

The amendment also provides that students first entering grade nine in September 2016 and thereafter must earn four units of credit in social studies, which shall include two units of credit in global history and geography, in addition to the current requirements of one unit of credit in American history, one half unit of credit in participation in government and one half unit of credit in economics or their equivalent, and that students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma in June 2015 and thereafter, must also pass either (1) the Regents examination in United States history and government, or (2) the Regents examination in global history and geography (for students first entering grade nine prior to September 2016) or the Regents examination in global history and geography II (1750 to present) (for students first entering grade nine in September 2016 and thereafter).

6. PAPERWORK:

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

7. DUPLICATION:

The amendment does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

There are no significant alternatives to the rule and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the rule by its effective date. The 4+1 pathway option would apply beginning with students who first enter grade nine in September 2011 and thereafter, or who are otherwise eligible to receive a high school diploma in June 2015 or thereafter. It is anticipated that the first administration of the new Regents Examination in Global Studies and Geography II (1750 to present) will be in June 2018.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs. The proposed amendment also prescribes new unit of credit and examination requirements for social studies.

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. 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 689 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 does not impose any additional compliance requirements on school districts and charter schools. The amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs. The 4+1 pathway option would not change existing graduation course or credit requirements and students must continue to meet all current course and 22 units of credit requirements, even if they were to elect to take advantage of the 4+1 pathway option. However, exist-

ing regulations provide several areas of flexibility for meeting course and credit requirements through, for example, the availability of integrated CTE courses and independent study (see 8 NYCRR § 100.5[d][6] and [9]). A number of school districts and BOCES already offer technical education programs that would meet the proposed pathway requirements.

The proposed amendment also provides that students first entering grade nine in September 2016 and thereafter must earn four units of credit in social studies, which shall include two units of credit in global history and geography, in addition to the current requirements of one unit of credit in American history, one half unit of credit in participation in government and one half unit of credit in economics or their equivalent, and that students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma in June 2015 and thereafter, must also pass either (1) the Regents examination in United States history and government, or (2) the Regents examination in global history and geography (for students first entering grade nine prior to September 2016) or the Regents examination in global history and geography II (1750 to present) (for students first entering grade nine in September 2016 and thereafter).

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on school districts or charter schools. The amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs. A number of school districts and BOCES already offer technical education programs that would meet the proposed pathway requirements. The proposed amendment also prescribes new unit of credit and examination requirements for social studies.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements or costs on school districts or charter schools.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on school districts or charter schools. The amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs. The 4+1 pathway option would not change existing graduation course or credit requirements and students must continue to meet all current course and 22 units of credit requirements, even if they were to elect to take advantage of the 4+1 pathway option. However, existing regulations provide several areas of flexibility for meeting course and credit requirements through, for example, the availability of integrated CTE courses and independent study (see 8 NYCRR § 100.5[d][6] and [9]). A number of school districts and BOCES already offer technical education programs that would meet the proposed pathway requirements.

The proposed amendment also provides that students first entering grade nine in September 2016 and thereafter must earn four units of credit in social studies, which shall include two units of credit in global history and geography, in addition to the current requirements of one unit of credit in American history, one half unit of credit in participation in government and one half unit of credit in economics or their equivalent, and that students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma in June 2015 and thereafter, must also pass either (1) the Regents examination in United States history and government, or (2) the Regents examination in global history and geography (for students first entering grade nine prior to September 2016) or the Regents examination in global history and geography II (1750 to present) (for students first entering grade nine in September 2016 and thereafter).

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the rule 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 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 long-range Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs, and to prescribe new unit of credit and examination requirements for social studies. The 4+1 pathway option would apply beginning with students who first enter grade nine in September 2011 and thereafter, or who are otherwise eligible to receive a high school diploma in June 2015 or thereafter. The proposed amendment also prescribes new unit of credit and examination requirements for social studies. It is anticipated that the first administration of the new Regents Examination in Global Studies and Geography II (1750 to present) will be in June 2018. 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

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 689 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 does not impose any additional compliance requirements on school districts and charter schools that are located in rural areas. The amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs. The 4+1 pathway option would not change existing graduation course or credit requirements and students must continue to meet all current course and 22 units of credit requirements, even if they were to elect to take advantage of the 4+1 pathway option. However, existing regulations provide several areas of flexibility for meeting course and credit requirements through, for example, the availability of integrated CTE courses and independent study (see 8 NYCRR § 100.5[d][6] and [9]). A number of school districts and BOCES already offer technical education programs that would meet the proposed pathway requirements.

The proposed amendment also provides that students first entering grade nine in September 2016 and thereafter must earn four units of credit in social studies, which shall include two units of credit in global history and geography, in addition to the current requirements of one unit of credit in American history, one half unit of credit in participation in government and one half unit of credit in economics or their equivalent, and that students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma in June 2015 and thereafter, must also pass either (1) the Regents examination in United States history and government, or (2) the Regents examination in global history and geography (for students first entering grade nine prior to September 2016) or the Regents examination in global history and geography II (1750 to present) (for students first entering grade nine in September 2016 and thereafter).

3. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on school districts or charter schools that are located in rural areas. The amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs. A number of school districts and BOCES already offer technical education programs that would meet the proposed pathway requirements. The proposed amendment also prescribes new unit of credit and examination requirements for social studies.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on school districts or charter schools that are located in rural areas. The amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs. The 4+1 pathway option would not change existing graduation course or credit requirements and students must continue to meet all current course and 22 units of credit requirements, even if they were to elect to take advantage of the 4+1 pathway option. However, existing regulations provide several areas of flexibility for meeting course and credit requirements through, for example, the availability of integrated CTE courses and independent study (see 8 NYCRR § 100.5[d][6] and [9]). A number of school districts and BOCES already offer technical education programs that would meet the proposed pathway requirements.

The proposed amendment also provides that students first entering grade nine in September 2016 and thereafter must earn four units of credit in social studies, which shall include two units of credit in global history and geography, in addition to the current requirements of one unit of credit in American history, one half unit of credit in participation in government and one half unit of credit in economics or their equivalent, and that students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma in June 2015 and thereafter, must also pass either (1) the Regents examination in United States history and government, or (2) the Regents examination in global history and geography (for students first entering grade nine prior to September 2016) or the Regents examination in global history and geography II (1750 to present) (for students first entering grade nine in September 2016 and thereafter).

Because the Regents policy upon which the proposed amendment is based applies to all school districts and BOCES 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 to establish criteria for multiple, comparably rigorous assessment pathways for graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs, and to prescribe new unit of credit and examination requirements for social studies. The 4+1 pathway option would apply beginning with students who first enter grade nine in September 2011 and thereafter, or who are otherwise eligible to receive a high school diploma in June 2015 or thereafter. The proposed amendment also prescribes new unit of credit and examination requirements for social studies. It is anticipated that the first administration of the new Regents Examination in Global Studies and Geography II (1750 to present) will be in June 2018. 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.

Job Impact Statement

The proposed amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs. The proposed amendment also prescribes new unit of credit and examination requirements for social studies.

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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

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

I.D. No. EDU-44-14-00027-P

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

Proposed Action: Amendment of sections 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), (20), 308 (not subdivided), 309 (not subdivided), 3204(3), 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) students in grades 7-8.

Text of proposed rule: 1. Paragraph (2) of subdivision (e) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective January 28, 2015, as follows:

(2) Beginning with the 1998-99 school year, the mathematics intermediate assessment shall be administered in grade 8. Beginning with the 2005-2006 school year, mathematics assessments shall be administered in grades 7 and 8, provided that, for the 2013-2014 *and 2014-15* school [year] *years*, students who attend grade 7 or 8 may take a Regents examination in mathematics in lieu of or in addition to the grade 7 or 8 mathematics assessment, in accordance with section 100.18(b)(14) of this Part.

2. Subparagraph (iii) of paragraph (14) of subdivision (b) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective January 28, 2015, as follows:

(iii) Notwithstanding the provisions of this section:

(a) For students who attend grade 7 or 8 and take a Regents examination in mathematics in the 2013-2014 *and 2014-15* school [year] *years*, but do not take the grade 7 or 8 mathematics assessment, participation and accountability determinations for the school in which the student attends grade 7 or 8 shall be based upon such student's performance on the Regents examination in mathematics. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's performance on mathematics assessments taken after the student first enters grade 9. For such students, a score of 65 or above, or a comparable score as approved by the Board of Regents, on a Regents examination in mathematics taken in grade 9 or thereafter will be credited as level 3 for purposes of calculating the high school performance index.

(b) For students who attend grade 7 or 8 and who take both the grade 7 or 8 mathematics assessment and a Regents examination in mathematics during the 2013-2014 *and 2014-15* school [year] *years*, participation and accountability determinations for the school such students attend in grade 7 or 8 shall be based upon the student's performance on the grade 7 or 8 mathematics assessment.

(c) . . .

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: Cosimo Tangorra, Jr., 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.

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:

At its October 2013 meeting, the Board of Regents directed the State Education Department (SED) to submit a request to the United States Department of Education (USDE) to waive provisions of the ESEA [Sections 1111(b)(1)(B) and 1111(b)(3)(C)(i)] that require states to measure the achievement of standards in mathematics using the same assessments for all students.

On December 20, 2013, USDE granted SED a one-year waiver (for the 2013-14 school year) from ESEA 1111(b)(1)(B) and 111(b)(3)(C)(i) so that the Department may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. However, the result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

Amendments to the Commissioner's Regulations implementing the waiver for the 2013-2014 school year were adopted as emergency rules at the January 2014 (EDU-04-14-00004-EP; State Register 1/29/2014), February 2014 (EDU-04-14-00004-ERP; State Register 2/26/14) and March 2014 (EDU-04-14-00004-EL State Register 4/30/2014) Regents meetings, and as a permanent rule at the April 2014 Regents meeting (EDU-04-14-00004-A; State Register 5/14/2014).

On September 22, 2014, USDE granted SED an additional one-year waiver (for the 2014-15 school year) from the provisions of ESEA 1111(b)(1)(B) and 111(b)(3)(C)(i). The proposed amendment would continue for the 2014-15 school year the provisions that were implemented in the 2013-14 school year to determine how student results will be used for institutional accountability purposes:

- For students who attend grade 7 or 8 and take a Regents examination in mathematics in the 2014-15 school year, but do not take the grade 7 or 8 mathematics assessment, participation and accountability determinations for the school in which the student attends grade 7 or 8 shall be based upon such student's performance on the Regents examination in mathematics. Participation and accountability determinations for the high school in which such student later enrolls shall be based upon such student's performance on mathematics assessments taken after the student first enters grade 9. For such students, a score of 65 or above, or a comparable score as approved by the Board of Regents, on a Regents examination in mathematics taken in grade 9 or thereafter will be credited as Level 3 ("full credit") for purposes of calculating the high school performance index.
- For students who attend grade 7 or 8 and who take both the grade 7 or 8 mathematics assessment and a Regents examination in mathematics during the 2014-15 school year, participation and accountability determinations for the school such students attend in grade 7 or 8 shall be based upon the student's performance on the grade 7 or 8 mathematics assessment.

The proposed amendment will permit local educational agencies (LEAs) to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 and 2014-2015 school years, thus eliminating the need for "double-testing" in grades 7 and 8. This provision also applies to students in grades 7 and 8 who receive instruction in Geometry and who take the Regents Examination in Geometry. The waiver serves to relieve students, teachers, and schools from having to prepare students in seventh and eighth grade who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

The proposed amendment also reflects the way in which student results will be used for institutional accountability purposes under the waiver:

- If a district opts to have accelerated students take the NYS Grade 7 or 8 Common Core Mathematics Test in addition to one or both Regents Examinations in Algebra, the results from the NYS Grade 7 or 8 Common Core Mathematics Test will be used for institutional accountability purposes rather than the results from a Regents Examination in mathematics. Students who take the Regents Examination in Algebra I (Common Core) in grade 7 or 8 will be counted as participants when determining the participation rate in mathematics for the school they attend in grade 7 or 8. The result on the Regents Examination in Algebra I (Common Core) taken in grade 7 or 8 will not count towards the participation rate in mathematics for the high school in which they later enroll. The same rule would apply for any students who take the Regents Examination in Geometry in grade 7 or 8.
- Results for students who take only the Regents Examination in Algebra I (Common Core) in grade 7 or 8 will be incorporated into the Performance Index for the school in which the student is enrolled. Grade 7 or 8 students who accelerate and obtain, at a minimum, the score on the Regents Examination in Algebra I (Common Core) necessary to meet Regents Diploma requirements will, for the purposes of calculating a school's or a district's Performance Index, be counted at the "full credit" level. Grade 7 or 8 students who do not obtain scores on the Regents Examination in Algebra I (Common Core) necessary to meet Regents Diploma requirements will earn the school or district "no credit" for the student's performance. The same rule will apply to seventh and eighth grade students who take another Regents Examination in mathematics (e.g., Geometry).

The waiver and proposed regulatory amendments pertain to institutional accountability requirements, not to the requirements that individual students must meet in order to graduate from high school. The waiver does not change (i.e., the waiver neither increases nor decreases) the requirements students must currently meet in order to obtain a diploma. However, for institutional accountability, high schools will only get credit in the Performance Index for Regents exams or their equivalents that are taken after a student first enters ninth grade, even if students have taken Regents exams in math or their equivalents in grade 7 or 8.

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 provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8 and will not impose any additional costs on the State, local governments, private regulated parties or the State Education Department. The proposed amendment will reduce costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 and 2014-2015 school years, thus eliminating the need for ''double-testing" in grades 7 and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7 and 8, and will not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment will reduce compliance requirements and costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 and 2014-2015 school years, thus eliminating the need for ''double-testing" in grades 7 and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

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 conform the Commissioner's Regulations and otherwise implement an additional one-year waiver (for the 2014-2015 school year) granted by the USDE from Elementary and

Secondary Education Act (ESEA) § § 1111(b)(1)(B) and 1111(b)(3)(C)(i). There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment is necessary to conform the Commissioner's Regulations to, and otherwise implement, an additional one-year waiver (for the 2014-2015 school year) granted to the State Education Department by the USDE from Elementary and Secondary Education Act (ESEA) § § 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

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 public school and school district accountability and is necessary to conform the Commissioner's Regulations to an additional one-year waiver (for the 2014-2015 school year) granted to the State Education Department (SED) by the United States Department of Education (USDE) from Elementary and Secondary Education Act (ESEA) § § 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. 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 rule 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 provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8, and will not impose any additional compliance requirements upon local governments. The proposed amendment will reduce compliance requirements by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 and 2014-2015 school years, thus eliminating the need for "double-testing" in grades 7 and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements.

4. COMPLIANCE COSTS:

The proposed amendment provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7 and 8 and will not impose any additional costs on local governments. The proposed amendment will reduce costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 and 2014-2015 school years, thus eliminating the need for "double-testing" in grades 7 and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

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 is necessary to conform the Commissioner's Regulations and to otherwise implement an additional one-year waiver (for the 2014-2015 school year) granted to SED by the USDE from Elementary and Secondary Education Act (ESEA) § § 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

The proposed amendment will reduce compliance requirements and costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 and 2014-2015 school years, thus eliminating the need for "double-testing" in grades 7 and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

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 long-range Regents policy relating to public school and school district accountability. Accordingly, there is no need for a shorter review period. Specifically, the proposed amendment conforms the Commissioner's Regulations to, and otherwise implements, an additional one-year waiver (for the 2014-2015 school year) granted to SED by the USDE from Elementary and Secondary Education Act (ESEA) § § 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

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

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 provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8, and will not impose any additional compliance requirements upon local governments. The proposed amendment will reduce compliance requirements by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 and 2014-2015 school years, thus eliminating the need for "double-testing" in grades 7 and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment provides flexibility to LEAs in the administration of Regents Mathematics examinations (Common Core) to students in grades 7and 8 and will not impose any additional costs on local governments. The proposed amendment will reduce costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 and 2014-2015 school years, thus eliminating the need for "double-testing" in grades 7 and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to, and otherwise implement, an additional one-year waiver (for the 2014-2015 school year) granted to SED by the USDE from Elementary and Secondary Education Act (ESEA) § § 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll. The proposed amendment will reduce compliance requirements and costs by permitting LEAs to administer only the Regents Examination in Algebra I (Common Core) to these students during the 2013-2014 and 2014-2015 school years, thus eliminating the need for "double-testing" in grades 7 and 8, and relieving students, teachers, and schools from having to prepare such students who are receiving instruction in Algebra I or Geometry for multiple end-of-year assessments 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.

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 long-range Regents policy relating to public school and school district accountability. Accordingly, there is no need for a shorter review period. Specifically, the proposed amendment conforms the Commissioner's Regulations to, and otherwise implements, an additional one-year waiver (for the 2014-2015 school year) granted to SED by the USDE from Elementary and Secondary Education Act (ESEA) § § 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. The result on the Regents Examination in Algebra I (Common Core) or Geometry taken in grade 7 or 8 will not count towards the participation rate or the Performance Index in mathematics for the high school in which they later enroll.

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.

Job Impact Statement

The proposed rule making relates to public school and school district accountability and is necessary to conform the Commissioner's Regulations to, and to otherwise implement, the one-year waiver (for the 2014-2015 school year) granted to the State Education Department by the United State Department of Education from Elementary and Secondary Education Act (ESEA) § § 1111(b)(1)(B) and 1111(b)(3)(C)(i) so that SED may use, with respect to a student who is not yet enrolled in high school but who takes mathematics coursework and the corresponding Algebra I or Geometry Regents Examination in grade 7 or 8, the student's score on that assessment for federal accountability purposes for the grade in which the student is enrolled. 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 rule 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 rule 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.

Department of Financial Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Replacement of Life Insurance Policies and Annuity Contracts

I.D. No. DFS-44-14-00003-P

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

Proposed Action: Amendment of Part 51 (Regulation 60) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 2123, 2403 and 4226

Subject: Replacement of life insurance policies and annuity contracts.

Purpose: To allow immediate binding of coverage; reduce wait time to obtain new coverage; minimize need for revised disclosure statements.

Substance of proposed rule (Full text is posted at the following State website:http://www.dfs.ny.gov): Sections 51.1 through 51.8, and Appendices 10A, 10B, 10C and 11, are amended for technical purposes and clarification.

Section 51.3(a) is amended to provide for additional conditional exemptions, including where an application for new coverage is made to an authorized insurer that is part of the holding company system of the existing insurer, and when new coverage is being issued pursuant to a plan approved by the Superintendent for the insurer to meet its obligations under Insurance Law section 3220(a)(6).

Section 51.4 is amended by separating the section into new subdivisions (a) and (b). New paragraph (2) of subdivision (b) permits the use of alternate procedures when the insurer solicits the application by mail or other methods without agent or broker involvement and, at the customer's request, there is subsequent limited agent or broker involvement to provide customer assistance or administrative support, provided that the "Disclosure Statement" is signed by the agent or broker and presented to the policyholder or contractholder.

Section 51.5(c)(2) is amended by separating the notification and document submission requirements in subdivision (c)(2) into new paragraphs (2) and (3) of subdivision (c).

Section 51.5(c)(3) is renumbered as 51.5(c)(4) and is amended by removing the agent or broker's duty to present a completed Disclosure Statement to an applicant no later than when the applicant signed the application.

Section 51.5(c)(4) is renumbered as 51.5(c)(5) and is amended by removing the agent or broker's duty to have an applicant acknowledge that the completed Disclosure Statement was received and read.

Section 51.5(c)(5) is renumbered as 51.5(c)(6) and is amended by removing the agent or broker's duty to submit the completed Disclosure Statement with the application to the replacing insurer.

A new section 51.5(c)(7) is added to require each agent or broker to submit to the replacing insurer, prior to the policy or contract delivery, an accurate and complete Disclosure Statement signed by the agent or broker.

Sections 51.6(a)(3), 51.6(b)(8) (as renumbered), and 51.6(c)(1) are amended by replacing the record retention language with a reference to the relevant regulation.

Section 51.6(b)(2) is amended by removing the replacing insurer's duty to require, with or as a part of each application, proof of receipt by the applicant of the completed Disclosure Statement.

Section 51.6(b)(3) is renumbered as section 51.6(b)(4). A new section 51.6(b)(3) is added to require the replacing insurer to require the agent or broker, prior to policy or contract delivery, to provide an accurate and complete Disclosure Statement signed by the agent or broker.

Section 51.6(b)(4) is renumbered as section 51.6(b)(6) and is amended to require replacing insurer to furnish to replaced insurer, within ten days of policy or contract delivery, the completed Disclosure Statement and a list of sales material used in the sale with an offer to provide such material within ten days of a request for the material.

Sections 51.6(b)(7) is withdrawn. Section 51.6(b)(5) is renumbered as section 51.6(b)(7) and is amended to require a replacing insurer to submit annual electronic reports, by February 1 of each year, to the Superintendent indicating which insurers have failed to provide the information required under section 51.6(c)(2).

A new section 51.6(b)(5) is added to require a replacing insurer to deliver the completed Disclosure Statement to the policyholder or contract holder no later than the time of policy or contract delivery. Where the

insurer requires the Disclosure Statement to be signed by the applicant, a copy of the applicant-signed Disclosure Statement shall be provided to the applicant at the time the applicant signed the Disclosure Statement.

Section 51.6(b)(6) is renumbered as section 51.6(b)(8).

Section 51.6(b)(9) is withdrawn. Section 51.6(b)(8) is renumbered as section 51.6(b)(9).

A new section 51.6(b)(10) is added to require a replacing insurer to send a revised Disclosure Statement with the policy or contract for delivery to the owner if an initial Disclosure Statement was provided to the applicant prior to the issuance of the policy or contract and the policy or contract is issued other than as applied for, except when it's resulted from changes in the amount of expected initial or additional premiums or changes in amounts of exchanges pursuant to Internal Revenue Code section 1035 rollovers or transfers that do not impact the key benefits and features of policy or contract as applied for.

Appendices 10A, 10B, 10C and 11 are repealed and new Appendices 10A, 10B, 10C and 11 are added. New Appendices 10A and 10B ("Disclosure Statement") (1) add three bulleted items regarding the time in which a Disclosure Statement must be provided, the right to a refund within 60 days, and contacting the company, agent or broker with questions; (2) contain revised language concerning the sales material; (3) no longer contain the acknowledgement that the applicant had received and read the Disclosure Statement before signing the application; and (4) denote that the applicant acknowledgement may be included or omitted at the insurer's option.

New Appendix 10C ("Important Notice") now includes a provision, in bold, that the Disclosure Statement is required to be provided to the applicant no later than upon policy or contract delivery.

New Appendix 11 ("Definition of Replacement") (1) no longer includes the requirement that the Disclosure Statement shall be provided at the same time as the Important Notice Regarding Replacement; and (2) now includes a statement that the applicant shall receive a completed Disclosure Statement no later than the time the new policy or contract is delivered.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Maffei, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5027, email: michael.maffei@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.

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate the Third Amendment to Insurance Regulation 60 (11 NYCRR 51) derives from § § 202 and 302 of the Financial Services Law ("FSL") and § 301, 2123, 2403 and 4226 of the Insurance Law.

FSL § 202 establishes the office of the Superintendent and designates the Superintendent as the head of the Department of Financial Services ("Department").

FSL § 302 and Insurance Law § 301 authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, the Insurance Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law, among other things.

Insurance Law § 2123(a)(1), in pertinent part, prohibits an insurance broker or an insurance agent or representative of an insurer from making misrepresentations, misleading statements and incomplete comparisons with respect to any policy or contract of life, accident or health insurance or any annuity contract.

Insurance Law § 2123(a)(3) requires any replacement of a life insurance policy or annuity contract by an insurance agent, representative of an insurer, or an insurance broker to conform to standards promulgated by regulation by the Superintendent (i.e., Insurance Regulation 60).

Insurance Law § 2403 prohibits any person from engaging in this state in any trade practice constituting a defined violation or a determined violation as defined in Insurance Law Article 24.

Insurance Law § 4226 prohibits an authorized life, or accident and health insurer from making misrepresentations, misleading statements, and incomplete comparisons.

Insurance Law § 4226(a)(6) requires any replacement of life insurance policies or annuity contracts by an insurer to conform to the standards promulgated by regulation by the Superintendent (i.e., Insurance Regulation 60).

2. Legislative objectives: Insurance Law § § 2123(a)(3) and 4226(a)(6) (the "statutes") were added by Chapter 616 of the Laws of 1997, providing consumer protections to ensure that purchasers of life insurance or annuities receive timely and accurate information on the costs and benefits of the insurance policy or annuity contract proposed to be purchased. The statutes require that any replacement of a life insurance policy or annuity contract conforms to standards promulgated by regulation by the Superintendent. Insurance Regulation 60 provides such standards.

The statutes specify that the regulation must, among other things, set forth the proper disclosure and notification procedures to replace a policy or contract and provide a 60-day free look period, during which time the policy or contract owner may return the new policies or contracts and reinstate the replaced policies or contracts. This rulemaking conforms to the statutes' specifications, and the disclosure requirements under this regulation will enable consumers to make better informed decisions. The 60-day "cooling off" period required under the statutes and regulation give consumers more time to consider their decision.

This amendment is consistent with the public policy objectives the Legislature sought to advance by enacting the statutes, because it ensures that consumers will still retain significant protections, i.e., receiving the Important Notice at the time of application, which generally explains why replacement may not be in a consumer's best interests; receiving the Disclosure Statement no later than the time of policy delivery so that a consumer may review a side-by-side comparison of the replaced and replacing coverages; and having a 60-day free-look period (rather than the 10-day free look period required in non-replacement situations) to return the replacement policy for a full refund and restore the replaced policy, to the best extent possible.

3. Needs and benefits: There are two primary elements to the disclosure requirements under Insurance Regulation 60: (1) the Important Notice, which is a general notice advising consumers to consider the effects of replacing coverage and the possible disadvantages of such replacement; and (2) the Disclosure Statement, which includes a transaction-specific comparison of the proposed and existing insurance and a signed agent statement identifying the advantages and disadvantages of the replacement. The Important Notice is similar to the notice required under the National Association of Insurance Commissioners model rule. The Disclosure Statement is a New York innovation, and insurance producers (insurance agents and brokers) and insurers have considered it to be a controversial compliance issue ever since the rule was revised in the late 1990s. However, the Disclosure Statement as revised under the proposal has garnered industry's support.

Currently, the completed Disclosure Statement must be provided to the applicant no later than the time that the application is signed. The process to obtain information from the replaced insurer for the completion of the Disclosure Statement can take several weeks. Because an insurance producer may not bind coverage without a signed application, insurance producers and insurers have argued that the delay prohibits them from moving forward with underwriting or binding coverage for applicants who want to move forward with the replacement. These delays may place consumers at risk of having lesser coverage, or no coverage[1], during the waiting period.

In the past, the trade association, Life Insurance Council of New York ("LlCONY"), has supported a bill that would ultimately eliminate the requirement for a Disclosure Statement altogether. Earlier this year, the National Association of Insurance and Financial Advisors – New York State ("NAIFA") asked the Department to revise Regulation 60 to expedite the commencement of underwriting and allow an insurance producer to bind coverage (i.e., conditional receipt) even when a replacement is involved, while still maintaining the Disclosure Statement requirement. This amendment changes the time in which a completed Disclosure Statement must be presented or delivered to an applicant from "no later than at the time the applicant signs the application" to "prior to the delivery of the replacement policy," achieving NAIFA's stated goals and gaining the life insurance industry's support while still retaining the current regulation's significant consumer protections. In addition, this amendment will benefit insureds, insurance producers and insurers by:

- allowing an insurance producer to bind coverage for a consumer more quickly, subject to an insurer's underwriting requirements, because the insurance producer will be able to accept the consumer's application immediately without waiting for a completed Disclosure Statement;
- enabling the underwriting process to proceed immediately, thereby expediting the policy issuance process. Applicants who are determined to replace their existing coverage are, reportedly, often times aggravated or upset that they must wait several weeks to apply for new coverage. Some applicants seek a quick exit from their current policies to avoid market losses (such as with variable annuities), but must wait several weeks before a new application can be completed;
- facilitating more insurance purchased over the internet. The current process of having to wait several weeks for a response from the replaced insurer effectively inhibits internet sales when replacements are involved;
- reducing the number of "revised" Disclosure Statements that are currently necessary to account for changes that occurred between the time the application was taken and the date that the policy is ultimately issued. The issuance of multiple Disclosure Statements can be confusing to policyholders, and this amendment is expected to dramatically reduce the number of instances where "revised" Disclosure Statements are necessary;
- preserving the Disclosure Statement as a valuable tool for consumers

to compare policies at the time of policy issuance and to review later on if they have questions about the new coverage; and

• making it easier for insurance producers and insurers to comply with the regulation. Moving the Disclosure Statement to the back-end of the process will streamline the process and eliminate many of the technical issues insurers encountered in the past.

4. Costs: Insurers licensed to do business in New York State that choose to change their replacement process will likely incur costs to modify existing computer software; develop and implement revised Regulation 60 procedures; and train insurance producers with respect to the revised Regulation 60 requirements. Such costs are difficult to estimate because of several factors, including an insurer's current procedures in monitoring Insurance Regulation 60 compliance and whether an insurer writes replacement business. The new streamlined process created by this amendment eliminates the need to produce sales material unless requested, and should result in fewer revised Disclosure Statements, which may create cost savings. The changes may also generate additional income from more internet sales of life insurance and annuity contracts. Moreover, an insurer may continue its current practice of presenting or delivering a completed Disclosure Statement no later than at the time an applicant signs an application, and thus not incur additional costs. However, because this proposal amends Appendices 10A, 10B, 10C, and 11, all life insurers that write replacement business are likely to incur some minimal costs related to replacing their exhibits.

The Department anticipates minimum additional costs to be incurred by affected insurance producers, associated primarily with the time they will spend in required training of each insurer's revised replacement procedures.

This amendment is expected to result in the need for the Department staff to review revised Regulation 60 procedures. The cost of such additional work required will be absorbed through the Department's normal budget and would not be on-going. There are no costs to other state government agencies or local governments.

5. Local government mandates: The amendments impose no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This amendment changes the time in which a completed Disclosure Statement must be presented or delivered to an applicant from "no later than at the time the applicant signs the application" to "prior to the delivery of the replacement policy." Also, a replacing insurer will now only need to furnish to a replaced insurer a list of the sales material used in the replacement sale, with an offer to provide copies of the sales material within a prescribed time.

Regulation 60 requires insurers to file their replacement procedures with the Department. Insurers will have to file their revised procedures with the Department if they choose to revise their procedures.

7. Duplication: The amendment does not duplicate any existing laws or regulations.

8. Alternatives: The Department circulated drafts of this proposal to NAIFA and LICONY, which represent affected insurers and insurance producers. The Department received comments from both associations. After careful consideration of industry comments, the Department revised the proposal, where feasible. The proposal was also presented to the Center for Economic Justice ("CEJ"), a non-profit organization that works to increase the availability, affordability and accessibility of economic goods and services for low-income and minority consumers. CEJ indicated that it has no objections to the proposed amendment.

NAIFA suggested decreasing the amount of time that the replaced insurer has to respond with information to the replacing agent or insurer from 20 days to seven days. However, this approach has previously been discussed with industry and vigorously opposed by life insurers due to systems constraints and other concerns.

NAIFA fully supports this amendment because it deals effectively with their request to speed up the application process and enables agents to bind coverage more quickly. LICONY and life insurers also support the amendment.

9. Federal standards: There are no federal standards in this subject area.

10. Compliance schedule: The amendment will become effective 90 days after publication in the State Register, which will enable insurers to address systems changes that will need to be made.

[1] A replacement can occur even when there is no coverage in instances where an existing policy was recently terminated (i.e., prior to the application for new coverage).

Regulatory Flexibility Analysis

1. Effect of the rule: This rulemaking will not affect any local governments. The amendment will affect regulated life insurers, none of which comes within the definition of "small business" as set forth in State Administrative Procedure Act § 102(8), because they are not independently owned and operated and they employ fewer than one hundred individuals. The amendment also will affect insurance producers, the vast majority of which are small businesses, because they are independently owned and operated and employ one hundred or fewer individuals. There are approximately 139,240 insurance agents and 12,651 insurance brokers licensed under the life insurance line of authority in New York that will be affected by this rulemaking. The Department does not have a record of the exact number of small businesses included in these groups.

2. Compliance requirements: The amendment removes an insurance producer's duty to submit to a replacing insurer a completed Disclosure Statement with an application for an insurance policy or annuity contract and requires each insurance producer to submit to the replacing insurer, prior to the policy or contract delivery, an accurate and complete Disclosure Statement signed by the insurance producer.

3. Professional services: The amendment does not require any small businesses that are affected by this rulemaking to use any professional services beyond those currently used to comply with this rule.

4. Compliance costs: The amendment will not impose any compliance costs on local governments. The Department anticipates minimum additional costs to be incurred by affected insurance producers, associated primarily with the time the insurance producers will spend in required training of each insurer's revised replacement procedures.

5. Economic and technological feasibility: Although there will be minimal additional costs associated with the amendment, compliance is economically feasible for small businesses.

6. Minimizing adverse impact: This rule applies equally to all insurers and insurance producers, regardless of their size. The rule does not impose any adverse or disparate impact on small businesses. This rule does not affect local governments.

7. Small business and local government participation: The Department circulated drafts of this proposal to the National Association of Insurance and Financial Advisors – New York State, a trade association representing affected insurance producers, many of which are small businesses, and the Life Insurance Council of New York, an insurers' trade association. The Department received comments from both associations. After careful consideration of industry comments, the Department revised the proposal, where feasible. This notice is intended to provide small businesses with an additional opportunity to participate in the rule-making process.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers and insurance producers covered by this amendment do business in every county in this state, including rural areas as defined in State Administrative Procedure Act ("SAPA") section 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This amendment changes the time in which a completed Disclosure Statement must be presented or delivered to an applicant from "no later than at the time the applicant signs the application" to "prior to the delivery of the replacement policy." Also, a replacing insurer now only needs to furnish to a replaced insurer a list of the sales material used in the replacement sale, with an offer to provide copies of the sales material within a prescribed time.

Insurance Regulation 60 requires insurers to file their replacement procedures with the Department. Because this amendment necessitates revision of insurers' replacement procedures, insurers will have to file their revised procedures with the Department.

It is unlikely that any insurer or insurance producer in a rural area will need professional services to comply with this rule beyond the professional services already being used.

3. Costs: Insurers licensed to do business in New York State that choose to change their replacement process will likely incur costs to modify existing computer software; develop and implement revised Regulation 60 procedures; and train insurance producers with respect to the revised Regulation 60 requirements. Such costs are difficult to estimate because of several factors, including an insurer's current procedures in monitoring Insurance Regulation 60 compliance and whether an insurer writes replacement business. The new streamlined process created by this amendment eliminates the need to produce sales material unless requested, and should result in fewer revised Disclosure Statements, which may create cost savings. The changes may also generate additional income from more internet sales of life insurance and annuity contracts. Moreover, an insurer may continue its current practice of presenting or delivering a completed Disclosure Statement no later than at the time an applicant signs an application, and thus not incur additional costs. However, because this proposal amends Appendices 10A, 10B, 10C, and 11, all life insurers that write replacement business are likely to incur some minimal costs related to revising or replacing their exhibits.

The Department anticipates minimum additional costs to be incurred by affected insurance producers, associated primarily with the time they will spend in required training of each insurer's revised replacement procedures.

This amendment is expected to result in the need for the Department staff to review revised Regulation 60 procedures. The cost of such additional work required will be absorbed through the Department's normal budget and would not be on-going. There are no costs to other state government agencies or local governments.

4. Minimizing adverse impact: This amendment uniformly affects insurers and insurance producers that are located in both rural and non-rural areas of New York State. The rulemaking should not have any adverse impact on rural areas.

5. Rural area participation: The Department circulated drafts of this proposal to the trade associations, the National Association of Insurance and Financial Advisors–New York State and the Life Insurance Council of New York, that represent affected insurers and insurance producers, some of which are located in rural areas. The Department received comments from both associations. After careful consideration of industry comments, the Department revised the proposal, where feasible. Also, public and private interests in rural areas will have an additional opportunity to participate in the rulemaking process once the proposed rule is published in the State Register and posted on the Department's website.

Job Impact Statement

The Department of Financial Services finds that this amendment should have no impact on jobs and employment opportunities, including self-employment opportunities in New York State. This amendment changes the time in which a completed Disclosure Statement must be presented or delivered to an applicant from "no later than at the time the applicant signs the application" to "prior to the delivery of the replacement policy."

Department of Law

NOTICE OF ADOPTION

Contents of Annual Financial Reports Filed with the Attorney General by Certain Nonprofits

I.D. No. LAW-33-14-00005-A

Filing No. 892

Filing Date: 2014-10-21

Effective Date: 2014-11-05

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

Action taken: Repeal of section 91.6 of Title 13 NYCRR.

Statutory authority: Executive Law, section 177(1); and Estates, Powers and Trust Law, section 8-1.4(h)

Subject: Contents of annual financial reports filed with the Attorney General by certain nonprofits.

Purpose: To repeal rule requiring that nonprofits disclose information about election advocacy to the Attorney General.

Text or summary was published in the August 20, 2014 issue of the Register, I.D. No. LAW-33-14-00005-EP.

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

Text of rule and any required statements and analyses may be obtained from: Gregory M. Krakower, Department of Law, 120 Broadway, NY, NY 10271, (212) 416-8030, email: gregory.krakower@ag.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department of Law received one comment on the rule during the comment period from a leading provider of business and transactional legal services to many non-profit organizations. The comment supported the proposed rule to repeal section 91.6 of Title 13 of the N.Y.C.R.R. (hereinafter "section 91.6"). It noted that reporting requirements related to the election related activities of nonprofits imposed by other agencies, including the New York State Board of Elections, made the reporting requirements imposed by section 91.6 duplicative and burdensome. The Department of Law evaluated the comment. It agrees that section 91.6 should be repealed. Section 14-107 of the Election Law and applicable rules promulgated by the New York State Board of Elections have made the requirements of section 91.6 largely redundant, and in some cases contradictory, and place an unnecessary burden on covered nonprofit organizations.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

LDC Inspection and Remediation Plans for Plastic Fusions

I.D. No. PSC-44-14-00020-P

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

Proposed Action: The Commission will decide whether to require local distribution companies (LDCs) to follow their plastic fusion inspection and remediation plans addressing safety risks submitted in Case 14-G-0212.

Statutory authority: Public Service Law, sections 65 and 66

Subject: LDC inspection and remediation plans for plastic fusions.

Purpose: Whether to order LDCs to comply with their filed plans that address any safety risks associated with plastic fusions.

Substance of proposed rule: Four New York local gas distribution companies (LDCs) - Central Hudson Gas and Electric Corporation (Central Hudson), National Fuel Gas Distribution Corporation (NFGDC), New York State Electric & Gas Corporation (NYSEG), and Rochester Gas & Electric Corporation (RG&E) – have submitted three plastic fusion remediation plans (NYSEG and RG&E are covered by one remediation plan) pursuant to the Commission's Order Investigating the Practices and Obtaining Information Concerning Plastic Fusions on Natural Gas Facilities in Case 14-G-0212 (issued June 27, 2014) (Plastic Fusion Order). The remediation plans submitted by Consolidated Edison Company of New York, Inc. and Orange & Rockland Utilities, Inc. will be published for public comment in a future SAPA filing. Those LDCs not submitting a plan pursuant to the Plastic Fusion Order made the determination that they have no plastic fusions requiring remediation.

The Commission is considering whether to order compliance with, modify, or reject the remediation plans submitted by Central Hudson, NFGDC, NYSEG and RG&E

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-0212SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Define Incremental Cost of Gas

I.D. No. PSC-44-14-00021-P

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

Proposed Action: The Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid to make various changes to the rates, charges, rules and regulations contained in its Schedule for Gas Service P.S.C. No. 219.

Statutory authority: Public Service Law, section 66(12)

Subject: Define incremental cost of gas.

Purpose: To define the incremental cost of gas and to streamline the Definitions and Abbreviations section.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk or the Company) to define the incremental cost of gas and to streamline the General Information Section 1. – Definitions and Abbreviations contained in P.S.C. No. 219 – Gas. Niagara Mohawk proposes to define the incremental cost of gas as "The highest priced gas delivered to the Company's city gates for a gas day determined by: 1) taking the following indices published in Platts Gas Daily "Daily Price Survey" for that day: a) DTI North Point midpoint; b) DTI South Point midpoint; c) Dawn, Ontario midpoint; and d) Iroquois, receipts midpoint; 2) adding the associated variable and fixed pipeline transporter charges to each of those indices to compute an equivalent city gate delivered price and 3) then selecting the highest of the equivalent city gate delivered prices." The amendments have an effective date of March 1, 2015. 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) 474-4535, 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-G-0371SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Enter into a Loan Agreement and to Extend the Loan Surcharge with EFC

I.D. No. PSC-44-14-00022-P

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

Proposed Action: The Commission is considering a petition filed by Beaver Dam Lake Water Corporation for approval of a loan and to extend the period for collection of the surcharge with the Environmental Facilities Corporation (EFC).

Statutory authority: Public Service Law, sections 89-f and 89-b

Subject: To enter into a loan agreement and to extend the loan surcharge with EFC.

Purpose: To allow Beaver Dam Lake Water Corporation to enter into a loan agreement and to extend the loan surcharge.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition by Beaver Dam Lake Water Corporation for approval of a loan to issue its obligations to the New York State Environmental Facilities Corporation in a principal sum not to exceed $2,020,503 with a term of up to 30 years, and to extend the period for collection of the surcharge approved in Case No. 06-W-1561 with the Environmental Facilities Corporation (EFC). The Commission shall 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-0459SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Rehearing Filed by West Valley Crystal Water Company, Inc. on October 9, 2014

I.D. No. PSC-44-14-00023-P

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

Proposed Action: The Commission is considering the petition of West Valley Crystal Water Company, Inc., submitted on October 9, 2014, for rehearing of the Order Determining Revenue Requirement, issued on September 8, 2014.

Statutory authority: Public Service Law, sections 22 and 89-c(10)

Subject: Petition for rehearing filed by West Valley Crystal Water Company, Inc. on October 9, 2014.

Purpose: Petition for rehearing filed by West Valley Crystal Water Company, Inc. on October 9, 2014.

Substance of proposed rule: On October 9, 2014, West Valley Crystal Water Company, Inc. (West Valley) submitted a petition for rehearing of the Commission's Order Determining Revenue Requirement, which was issued on September 8, 2014. The petition argues that the Commission committed an error of fact in that its determination that West Valley has not timely replaced its infrastructure was made against the weight of substantial evidence and without a rational basis, which the petition argues, constitutes an error of law. The petition also argues that the Commission's denial of a salary increase for West Valley's operator does not allow for the costs of required water testing and that West Valley provided information that the Order states was not provided. The Commission may consider any related issues.

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-W-0070SP2)

Workers' Compensation Board

EMERGENCY RULE MAKING

Methodology for Determining Annual Assessments

I.D. No. WCB-44-14-00002-E

Filing No. 878

Filing Date: 2014-10-15

Effective Date: 2014-10-15

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

Action taken: Addition of Part 500 to Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, parts 117 and 151

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

Specific reasons underlying the finding of necessity: This amendment is adopted as an emergency measure because time is of the essence. The

Board is required, as specified in the statute cited below to establish an assessment rate by November 1, 2013 and assess that rate by January 1, 2014. Specifically, Section 151 (2) WCL states:

"on the first day of November two thousand thirteen, and annually thereafter, the chair shall establish an assessment rate for all affected employers in the state of New York in an amount expected to be sufficient to produce assessment receipts at least sufficient to fund all estimated annual expense pursuant to subdivision one of this section except those expenses for which an assessment is authorized for self- insurance pursuant to subdivision five of section fifty of this chapter. Such rate shall be assessed effective the first of January of the succeeding year and shall be based on a single methodology determined by the chair."

The assessment rate funds statutorily required programs such as the Board's administrative expenses (151 WCL), the liabilities of the Special Disability Fund (15-8 WCL), the Fund for Reopened Cases (25-a WCL) and the Special Fund for Disability Benefits (214 WCL).

Accordingly, emergency adoption of this rule is necessary.

Subject: Methodology for determining annual Assessments.

Purpose: Annual assessments to fund administrative costs and special fund payments provided for in the Workers' Compensation Law (WCL).

Substance of emergency rule: The proposed regulation adds new Sections 500.00-500.12 to comply with Chapter 57 of the Laws of 2013 which requires the Board to streamline the manner in which it collects its administrative and special fund assessments to one that will be consistent among the various categories of payers and will be based upon active coverage.

Section 500-2 states that the assessment rate will be established by November 1st annually and apply to policies effective on or before January 1st of the next calendar year.

Section 500-3 establishes that the rate will apply to standard premium and defines the expenses to be covered by the assessment rate.

Section 500-4 states that the rate established by November 1st of each year for the succeeding calendar year shall be applied to a base of standard premium as defined below.

Standard premium is defined as follows:

(a) Carriers and State Insurance Fund – For employers securing workers' compensation coverage via a policy issued either by an authorized carrier or the State Insurance Fund, standard premium shall mean the full annual value of premiums booked for each policy written or renewed during a specific reporting period as determined on forms prescribed by the Chair.

(b) Private and Public Self-Insured Employers – Standard written premium for self-insured employers shall be determined by applying payroll by classification codes to applicable loss cost rates. Loss cost rates for self-insured employers shall be furnished by the Chair based, in whole or in part at the discretion of the Chair, upon comparable rates applicable to carrier policies which may be adjusted for administrative expenses. To the extent there are no corresponding class codes for one or more classifications of payroll, the Chair shall establish an equivalent rate.

Estimated statewide premiums shall be determined by combining the standard premium for all employers.

Section 500-5 establishes that the assessment rate shall be a percentage of standard premiums and calculated as follows:

Total estimated annual expenses as defined in 500.3, Divided By, Total estimated statewide premiums as defined in 500.4

The estimated statewide premiums may, where appropriate, reflect projected changes in overall premium levels that may result from loss cost rate changes approved by the Department of Financial Services.

Section 500-6 establishes that rate adjustments will be addressed as follows:

(a) If the rate established for any given year results in the collection of assessments which exceed the amounts described herein, the assessment rate for the next calendar year shall be reduced accordingly. However, the assessment rate for each calendar year shall ensure that the clearing account described in section 500.7 maintains a balance of at least ten percent of the annual projected assessments.

(b) If it appears that the rate established for any given year will not produce assessment revenue sufficient to meet all estimated annual expenses as described herein, the Board may make adjustments to the existing published rate prior to the beginning of the next calendar year. Any such mid-year rate adjustments must be published at least 45 days prior to becoming effective and will apply to policies with effective dates between the effective date of the adjusted rate through December 31 of that calendar year or until the Board issues a new rate, whichever is later.

Section 500-7 establishes that all assessment monies received shall first be deposited into a clearing account established for the purpose of receiving assessments. Assessment revenue will be applied pursuant to WCL § 151-8 in accordance with each then applicable financing agreement prior to application for any other purpose. Once any and all amounts required by applicable financing agreements have been met for the year, assessments will then be applied from the clearing account, at the discretion of the Chair, to the administrative and special fund expenses described herein.

Section 500-8 establishes that assessment should be remitted as follows:

(a) The assessment rate established by the Board shall apply to all employers required to secure compensation for their employees.

(b) Until such time as the Board can establish a direct employer payment process, the remittance to the Board of all required assessments shall be as follows:

1. For those employers obtaining coverage: (a) through a policy with the State Insurance Fund; (b) through a policy with an authorized carrier; (c) through a county self-insurance plan under Article V of the WCL; or (d) through a private or public group self-insurer; such assessment amounts shall be collected from the employer and remitted to the Board by the State Insurance Fund, carrier, county plan, or self-insured group. The State Insurance Fund, carrier, county plan, or self-insured group shall complete the reports identified in section 500.9 herein, apply the applicable assessment rate as established by the Board and timely remit both the report and the corresponding payment to the Board on the schedule set forth in paragraph (c) below.

2. For those private or public employers that self-insure individually, said employers shall pay assessment amounts directly to the Board. Such employers shall complete the report identified in section 500.9 herein, apply the applicable assessment rate as established by the Board and, timely remit both the report and the corresponding payment to the Board on the schedule set forth in paragraph (c) below.

(c) Both the report identified in section 500.9 below and the required assessment payment shall be remitted to the Board in accordance with the following schedule:

Assessments related to the quarter ending March 31 postmarked on or before April 30.

Assessments related to the quarter ending June 30 postmarked on or before July 31.

Assessments related to the quarter ending September 30 postmarked on or before October 31.

Assessment related to the quarter ending December 31 postmarked on or before January 31.

(d) If the above cited due dates fall on a weekend or holiday the remittances shall be due the next following business day.

(e) In addition at any time prior to March 31, June 30, September 30, or December 31, the Board may identify any employer that has refused or neglected to pay assessments pursuant to WCL § 50(3-a)(7)(b). In such instance the Board shall calculate a charge to be imposed on such employer in addition to the assessment required herein. Such charge shall be a percentage of the standard premium as defined herein and shall range from between 10 and 30 percent based upon: 1) the length of time the employer has been delinquent in its WCL § 50(3-a)(7)(b) assessment obligations; 2) the amount of the WCL § 50(3-a)(7)(b) assessment delinquency; and 3) the amount of the insolvent group self-insurance trust's obligations that remain unmet at the time of the calculation of the surcharge, the Board shall inform the employer's current provider of coverage of the neglect or delinquency. The employer's current provider of coverage shall collect and remit such additional surcharge in the manner provided for above. All monies recovered from the payment of such charge shall be credited to: 1) the employer's unmet obligations under the WCL; and 2) the group self-insurance Trusts' unmet obligations under the WCL.

Section 500-9 describes the required reports:

(a) The assessment payment remitted quarterly shall be accompanied by reports prescribed by the Chair. Depending upon whether the remitter is a carrier, the State Insurance Fund, private or public self-insured employer, or private or public group self-insured employer, these reports may contain but not be limited to: written premium; total payroll; payroll by classification; adjustments from prior periods; etc. Annual reports prescribed by the Chair may also be required.

(b) All such prescribed reports will require an attestation by an authorized representative that all information is true, correct and complete. A payer that knowingly makes a material misrepresentation of information related to assessments shall be guilty of a Class E Felony.

(c) To the extent that a payer is also required to report the information requested by this section, or substantially similar values, to other governmental entities including but not limited to state and federal agencies, then the information reported by the payer to the Board shall be consistent with the payer's reporting to other entities. To the extent that the payer's reporting to the Board is materially inconsistent with the payer's reports to other governmental entities, then the payer shall disclose such inconsistency in the reports submitted to the Board and supply an explanation for such inconsistency.

Section 500-10 establishes that, in the event of a carrier, the State Insurance Fund, a private or public self-insured employer, or a private or public

group self-insured employer's failure to remit assessment payments and reports in accordance with the requirements contained herein the Board may undertake any or all of the following collection activities with respect to the assessments:

(a) Refer the matter to the Office of the Attorney General for commencement of a collection action; assessment.

(b)Withhold any and all payments to the carrier, the State Insurance Fund, private or public self-insured employer or private or public group self-insured employer including but not limited to special fund reimbursements, until such time as all assessments have been paid in full.

(c)The failure of a private or public self-insured employer or private or public group self-insured employer to timely remit assessments and required reports shall constitute good cause for the Board to revoke said self-insurers self-insured status.

In the event that a carrier, the State Insurance Fund, a private or public self-insured employer, or a private or public group self-insured employer has underpaid an assessment as the result of inaccurate reporting, such payer shall pay all overdue assessments in full within 30 days of notification by the Board and may be subject to interest at a rate of 9% annually on the unpaid amount. Further, in the event that it is determined that the payer knew or should have known that the reported information was inaccurate an additional penalty of up to 20% of the unpaid amount may be imposed by the Board against such carrier, the State Insurance Fund, private or public self-insured employers.

Section 500-11 establishes that on an annual basis in conjunction with the November 1 publication of the assessment rate, the Board will prepare a report which supports the assessment rate established for policies effective in the succeeding calendar year. Such report shall also be prepared in the event an assessment rate modification is required pursuant to Section 500.6. Such report will include a summary of the projections or estimates made in the development of the assessment rate including the expenses covered by the rate and underlying assessment base.

Section 500.12 establishes that the Chair may conduct periodic audits on employers, self-insurers, carriers and the State Insurance Fund concerning any information or payment related to assessments.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires January 12, 2015.

Text of rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, 328 State Street, Office of General Counsel, Schenectady, NY 12305-2318, (518) 486-9564, email: regulations@wcb.ny.gov

Regulatory Impact Statement

1. Statutory authority:

Workers' Compensation Law Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Chapter 57 of the Laws of 2013 amends several sections of the WCL including section 151 which is repealed and a new section added.

Section 151 WCL directs the Board to promulgate an assessment rate by November 1, 2013 and assess that rate by January 1, 2014. Specifically, Section 151(2) WCL states:

"on the first day of November two thousand thirteen, and annually thereafter, the chair shall establish an assessment rate for all affected employers in the state of New York in an amount expected to be sufficient to produce assessment receipts at least sufficient to fund all estimated annual expense pursuant to subdivision one of this section except those expenses for which an assessment is authorized for self- insurance pursuant to subdivision five of section fifty of this chapter. Such rate shall be assessed effective the first of January of the succeeding year and shall be based on a single methodology determined by the chair." The assessment rate funds statutorily required programs such as the Board's administrative expenses (151 WCL), the liabilities of the Special Disability Fund (15-8 WCL), the Fund for Reopened Cases (25-a WCL) and the Special Fund for Disability Benefits (214 WCL).

2. Legislative objectives:

The legislation enacted sweeping reforms to the manner in which the WCB collects its assessments.

The WCB currently issues bills for the liabilities associated with each of the assessments noted above which, in total, are approximately $1.2 billion for 2013. The new process will eliminate the need for the WCB to issue bills for these assessments and instead move towards a "pass through" assessment whereby employers ultimately remit their share of the assessment directly to the WCB. As written, the legislation envisions an employer based assessment process. Ultimately, it is expected that the assessments will be collected directly from employers. However, it is not feasible to go directly from a carrier based to employer based assessment, particularly given the aggressive timeframes imposed by the legislation which mandate a new process by January 1, 2014.

A transitional period is anticipated in the legislation as evidenced by the language which states that until such time as the WCB establishes a direct employer payment process, assessments shall be remitted to the WCB by carriers, the SIF, county plans and groups. Individual private and public self-insurers shall continue to pay assessments directly. Finally, the legislation also allows the WCB to enter into an agreement with the Dormitory Authority and issue up to $900 million in bonds to address unmet self-insured obligations. The debt service costs of any such bonds issued would be included in the annual rate. The debt service for these bonds as well as the WAMO bonds would take priority over the administrative expenses, special funds and interdepartmental funds.

3. Needs and benefits:

The new legislation and supporting regulations will address many issues with the current process. Specifically:

- Currently, a disconnect exists between the amounts that carriers collect from their policy holders and the amounts that the WCB bills those carriers. The new rule will result in the WCB no longer issuing assessment bills and instead promulgating a rate that will fund the required programs. Carriers will collect the amount driven by the rate from their policyholders and remit that amount to the Board. Eventually, the employers will remit to the Board directly.
- The base factors currently used to calculate the various payers proportionate share of assessments are not currently audited and/or verified. The new process will include mechanisms to audit the data including verification of amounts included on other State mandated forms like the NYS-45 required by the Departments of Tax and Finance and Labor.
- The current process of assessments being based on paid indemnity for certain payers requires the accrual and funding of significant long term liabilities. This requires carriers, SIF and self-insured's to hold aside monies to pay assessment liabilities that they will not have to actually remit until several years later.
- The current process is administratively onerous and lacks transparency for both the WCB and the various payers. The new process will result in more verification and audit of the data submitted.
- Each carrier, SIF, private and public self-insurer is receiving as many as 23 invoices from the WCB annually. Also, the data collection used to apportion the different assessments is manual and paper-based. The system used to calculate and bill the assessments is a custom module to the financial system used by the WCB that is difficult to maintain, particularly when upgrades and/or legislative changes are necessary. The WCB will no longer issue invoices and eventually a system will be implemented to allow payers to view and pay their assessments electronically.

4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments since all of these entities are currently required to pay assessments. The total projected need for 2014 of $893 million is significantly less than the average amounts billed for assessments for the past three years of more than $1 billion. The Fund for Reopened Cases was closed to new cases and for the short term will not be included in the assessment rate because the fund balance will support the claims. Additionally, roughly $7.4 million was billed on average related to the administration of the Disability Benefits program; these amounts will be rolled into the workers' compensation assessment rate. Although many of the payers of the DB assessment will still be paying WCB assessments (as they also write workers' compensation or have an active self-insurance program) they will no longer be paying a separate assessment related to DB. This adjustment adds to the administrative efficiency of the new method as it is not cost beneficial to have a separate rate and/or assessment for less than 1% of the overall amounts collected in a given year. Collectively, it is estimated that the municipal self-insurers will pay $90 million less in assessments for 2014. However, the impact on the specific payers will be determined based on actual payroll.

For policies effective for calendar year 2014, the rate will be established as a percentage of standard premiums as follows: Total Estimated Annual Expenses Divided by Total Estimated Statewide Premiums. The estimated annual expenses to be covered by the rate total $893 million. Statewide standard premiums are projected to be $6.4 billion. Accordingly, the assessment rate for 2014 will be set at 13.8%.

5. Local government mandates:

Since local governments have always been required to pay WCB assessments, this law does not impose any new requirements on these entities.

6. Paperwork:

This proposed rule modifies the reporting requirements for municipalities, but does not impose additional reporting requirements. Eventually, it is the Board's intent to streamline the reporting process and allow entities to report and pay their assessments electronically, but this is not an enhancement we could offer at the outset given the abbreviated timeframes for implementation.

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

The legislation directed the Board to promulgate an assessment rate and rules and regulations to establish the process by which carriers, self-insured's, SIF and the political subdivisions would pay the assessments to the Board. Because of the short timeframes to implement a new assessment process, and the ultimate goal of transitioning to an employer based payment stream, the only practical basis on which to calculate the assessment in the short term is premium. Premium information is readily available for the vast majority (more than 80%) of employers that obtain a policy from a carrier or the SIF. A standard premium equivalent can be determined for the self-insured employers (both private and municipal) thus providing a similar basis for all employers, regardless of what type of coverage they maintain.

9. Federal standards:

There are no federal standards applicable to this proposed rule.

10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

Pursuant to Section 50 WCL, most businesses and local governments are required to carry workers' compensation coverage for their employees. They may obtain a policy from the State Insurance Fund, apply to, and become self-insured or obtain a policy from an insurance carrier licensed to write workers' compensation in New York. All entities that carry workers compensation are required to pay assessments to the Workers Compensation Board. There are approximately 1,900 payers in New York currently paying assessments including the carriers, SIF, private and public self-insurers. Most small businesses and local governments are currently paying WCB assessments. Depending on how they secure their workers compensation will determine the impact of the apportionment methodology and new rate on their assessment amounts. However, virtually all categories of payers will see a net decrease in their assessments in 2014 whether they are carrier covered or self- insured.

2. Compliance requirements:

There is minimal impact on local governments and small businesses to comply with this rule.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments.

5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

6. Minimizing adverse impact:

Because the net result of the change in the assessment methodology, the proposed rule would be beneficial to local governments and small businesses. This rule provides only a benefit to small businesses and local governments.

7. Small business and local government participation:

The Board received input from various stakeholder groups which provide coverage for many small businesses and local governments. A decrease in assessments was recognized as a major benefit to these groups.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies to all carriers, the State Insurance Fund, self-insured employers and political subdivisions in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements:

This rule applies to all carriers, the State Insurance Fund, self-insured employers and political subdivisions in all areas of the state. Impact on reporting and compliance for all entities is minimal.

3. Costs:

This proposal will not impose any compliance costs on rural areas.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board consulted with carriers and some municipalities on the rule making process.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The regulation merely changes the apportionment and methodology for entities to calculate and pay their required assessments to the Workers' Compensation Board. These regulations ultimately benefit the participants to the workers' compensation system by streamlining the assessment process and reducing their liability in 2014.