

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.

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Examinations for Teacher Certification

I.D. No. EDU-05-16-00003-EP

Filing No. 116

Filing Date: 2016-01-19

Effective Date: 2016-01-19

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

Proposed Action: Amendment of section 80-1.5(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 215(not subdivided), 3001(2), 3004(1) and 3009(1)

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

Specific reasons underlying the finding of necessity: Despite the high pass rates on Parts One and Three of the new multi-subject content specialty test (7-12), the field has expressed concern about the pass rates for candidates on Part Two of the examination. In response to the field's concerns, the proposed amendment provides a safety net option for candidates who pass Parts One and Three, but fail Part Two of the multi-subject content specialty test (7-12). The safety net option will exist conterminously with any other safety nets covering the remainder of the teacher certification examinations.

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 April 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the April Regents meeting, is May 4, 2016, the date a Notice of Adoption would be published in the *State Register*. However, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to ensure that teacher candidates who will be applying for certification from now until June 30, 2016, have timely and sufficient notice that, if they fail Part Two of the multi-subject content specialty test (grades 7-12) and receive a satisfactory score on Parts One and Three, they have the option to use the safety net in lieu of retaking Part Two of the examination to receive an initial certificate.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the April 2016 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: Examinations for Teacher Certification.

Purpose: To provide a safety net for candidates who take and fail Part Two: Mathematics of the new Multi-Subject: Secondary Teachers Grades 7-12 Content Specialty Test (CST) which is required for Students with Disabilities, Grades 7-12, Generalist Teacher Certification.

Text of emergency/proposed rule: Paragraph (3) of Subdivision (c) of section 80-1.5 of the Regulations of the Commissioner of Education shall be amended, effective January 19, 2016, to read as follows:

(3) Content specialty [examination] test. [A] *Except as otherwise provided in subparagraph (iii) of this paragraph*, a candidate who takes and fails to achieve a satisfactory level of performance on any required revised content specialty [examination] test in the candidate's certification area may, in lieu of retaking such revised content specialty test:

(i) receive a satisfactory score on the predecessor content specialty [examination] test after receipt of his/her failing score on the revised content specialty tests and prior to June 30, 2016; or

(ii) pass the predecessor content specialty [examination] test on or before the new certification examination requirements became operational, provided the candidate has taken and failed the revised content specialty test prior to June 30, 2016.

(c) *A candidate who takes and fails to achieve a satisfactory level of performance on Part Two of the new Multi-Subject: Secondary Teachers Grade 7 - Grade 12 content specialty test, if required for the certificate area sought and he/she received a satisfactory level of performance on Parts One and Three of such test on or after September 1, 2014 through June 30, 2016, may, in lieu of retaking Part Two of such examination:*

(1) *present the Department with sufficient evidence of satisfactory completion of the mathematics tutorial approved by the Department prior to June 30, 2016; and*

(2) *submit an attestation on or before June 30, 2016, on a form prescribed by the Commissioner, and signed by a dean or chief academic officer of a higher education institution or the substantial equivalent, attesting that the candidate has:*

(i) *demonstrated comparable mathematical skills to what is required by Part Two of the multi-subject (7-12) content specialty examination through course completion by completing a minimum of three semester hours in mathematics coursework satisfactory to the Commissioner; and*

(ii) *received a cumulative grade of a 3.0 or higher, or the substantial equivalent, in such coursework.*

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 April 17, 2016.

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@nysed.gov

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

Education Law section 3004(1) authorizes the Commissioner of Education to promulgate regulations to establish the examination and certification requirements for all teachers employed in this State.

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

2. LEGISLATIVE OBJECTIVES:

The amendment carries out the legislative objectives of the above-referenced statutes by providing flexibility relating to the Part Two of the multi-subject content specialty test (7-12), which is required for certain teachers who are seeking to be certified in New York State.

3. NEEDS AND BENEFITS:

Consistent with the intent of the safety nets that are currently in place for the Academic Literacy Skills Test (ALST), the edTPA and the other Content Specialty Tests, the Commissioner directed the Department to create a temporary safety net for those candidates who have taken and failed Part Two (the Mathematics portion) of the Multi-Subject: Secondary Teachers Grade 7 - Grade 12 Content Specialty Test. Despite the high pass rates on Parts One and Three of the new multi-subject content specialty test (7-12), the field has expressed concern about the pass rates for candidates on Part Two of the examination. In response to the field's concerns, the proposed amendment provides a safety net option for candidates who pass Parts One and Three, but fail Part Two of the multi-subject content specialty test (7-12). The safety net option will exist conterminously with any other safety nets covering the remainder of the teacher certification examinations.

In order to be eligible for the safety net, a candidate must pass Part One (Literacy and English Language Arts) and Part Three (Arts and Sciences) of the Multi-Subject: Secondary Teachers Grade 7 - Grade 12 CST and then take and fail Part Two (Mathematics) of the CST and then complete a mathematics tutorial that will be provided to candidates who qualify. The tutorial is intended to review mathematics lessons aligned to the New York State Learning Standards for mathematics comparable to the content on Part Two of the Multi-Subject: Secondary Teachers Grade 7 - Grade 12 test. The tutorial also prompts candidates to answer certain questions to review the skills needed to prepare them for the math portion of the Multi-Subject: Secondary Teachers Grade 7 - Grade 12.

Upon completion of the mathematics tutorial, candidates must then submit an attestation completed by the higher education institution they attended, attesting that they have completed at least one college mathematics course (3 semester hours) and received a grade of 3.0 or higher or the substantial equivalent in that course. The attestation must be signed by the Dean, Chief Academic Officer, or the substantial equivalent at the college/university certifying that the candidate attended the college/university, and has satisfactorily completed comparable mathematics coursework at such college/university.

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: The State Education Department will use existing resources to implement the safety net.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

There are no additional paperwork requirements beyond those currently imposed; except that for candidates who take and fail Part Two of the multi-subject content specialty test (7-12) to be eligible for the safety net,

the candidate may submit an attestation on a form prescribed by the Commissioner, and signed by a dean, chief academic officer, or the substantial equivalent at the college/university of a higher education institution, attesting that the candidate has demonstrated comparable mathematics coursework at the college/university.

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

In order to address the concerns raised by the field, the proposed amendment attempts to provide additional flexibility for teaching candidates who take and fail Part Two of the multi-subject content specialty test (7-12) on their first attempt. A candidate must pass Part One (Literacy and English Language Arts) and Part Three (Arts and Sciences) of the Multi-Subject: Secondary Teachers Grade 7 - Grade 12 CST and then take and fail Part Two (Mathematics) of the CST and then complete a mathematics tutorial that will be provided to candidates who qualify.

Upon completion of the mathematics tutorial, candidates must then submit an attestation completed by the higher education institution they attended, attesting that they have completed at least one college mathematics course (3 semester hours) and received a grade of 3.0 or higher or the substantial equivalent in that course. The attestation must be signed by the Dean, Chief Academic Officer, or the substantial equivalent at the college/university certifying that the candidate attended the college/university, and has satisfactorily completed comparable mathematics coursework at such college/university.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect teacher candidates who are applying for an initial certificate and who have taken and failed Part Two of the multi-subject content specialty test (7-12) prior to June 30, 2016, including those candidates in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

In order to address the concerns raised by the field, the proposed amendment attempts to provide additional flexibility for candidates who take and fail Part Two of the multi-subject content specialty test (7-12) on their first attempt. The proposed amendment provides candidates alternative options to fulfill the requirements for certification if the take and fail the Part Two of the examination.

A candidate must pass Part One (Literacy and English Language Arts) and Part Three (Arts and Sciences) of the Multi-Subject: Secondary Teachers Grade 7 - Grade 12 CST and then take and fail Part Two (Mathematics) of the CST and then complete a mathematics tutorial that will be provided to candidates who qualify. The tutorial is intended to review mathematics lessons aligned to the New York State Learning Standards for mathematics comparable to the content on Part Two of the Multi-Subject: Secondary Teachers Grade 7 - Grade 12 test. The tutorial also prompts candidates to answer certain questions to review the skills needed to prepare them for the math portion of the Multi-Subject: Secondary Teachers Grade 7 - Grade 12.

Upon completion of the mathematics tutorial, candidates must then submit an attestation completed by the higher education institution they attended, attesting that they have completed at least one college mathematics course (3 semester hours) and received a grade of 3.0 or higher or the substantial equivalent in that course. The attestation must be signed by the Dean, Chief Academic Officer, or the substantial equivalent at the college/university certifying that the candidate attended the college/university,

and has satisfactorily completed comparable mathematics coursework at such college/university.

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

3. COSTS:

The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department.

4. MINIMIZING ADVERSE IMPACT:

The State Education Department does not believe any changes for candidates who live or work in rural areas is warranted because uniform standards for certification are necessary across the State.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

In order to address the concerns raised by the field, the proposed amendment attempts to provide additional flexibility for candidates who take and fail Part Two of the multi-subject content specialty test (7-12) on their first attempt. The proposed amendment provides candidates alternative options to fulfill the requirements for certification if the take and fail the Part Two of the examination.

A candidate must pass Part One (Literacy and English Language Arts) and Part Three (Arts and Sciences) of the Multi-Subject: Secondary Teachers Grade 7 - Grade 12 CST and then take and fail Part Two (Mathematics) of the CST and then complete a mathematics tutorial that will be provided to candidates who qualify. The tutorial is intended to review mathematics lessons aligned to the New York State Learning Standards for mathematics comparable to the content on Part Two of the Multi-Subject: Secondary Teachers Grade 7 - Grade 12 test. The tutorial also prompts candidates to answer certain questions to review the skills needed to prepare them for the math portion of the Multi-Subject: Secondary Teachers Grade 7 - Grade 12.

Upon completion of the mathematics tutorial, candidates must then submit an attestation completed by the higher education institution they attended, attesting that they have completed at least one college mathematics course (3 semester hours) and received a grade of 3.0 or higher or the substantial equivalent in that course. The attestation must be signed by the Dean, Chief Academic Officer, or the substantial equivalent at the college/university certifying that the candidate attended the college/university, and has satisfactorily completed comparable mathematics coursework at such college/university.

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

State Commission on Judicial Conduct

NOTICE OF ADOPTION

Practice of Law Before the Commission

I.D. No. JDC-47-15-00006-A

Filing No. 73

Filing Date: 2016-01-15

Effective Date: 2016-02-03

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

Action taken: Addition of section 7000.14(d) to Title 22 NYCRR.

Statutory authority: Judiciary Law, section 42(5)

Subject: Practice of law before the commission.

Purpose: To prohibit the practice of law before the commission, by commission members, their law firms and former commission members.

Text or summary was published in the November 25, 2015 issue of the Register, I.D. No. JDC-47-15-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Marisa E. Harrison, Commission on Judicial Conduct, 61 Broadway, Suite 1200, New York, New York 10006, (646) 386-4800, email: harrison@cjic.ny.gov

Assessment of Public Comment

The agency received no public comment.

Office for People with Developmental Disabilities

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Article 16 Clinic Services and Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD)

I.D. No. PDD-42-15-00002-RP

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

Proposed Action: Amendment of sections 635-10.4, 671.5 and Part 679; and addition of Subpart 635-13 to Title 14 NYCRR.

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

Subject: Article 16 Clinic Services and Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD).

Purpose: To discontinue off-site article 16 clinic services and to add requirements for IPSIDD.

Substance of revised rule: The proposed regulations amend requirements in 14 NYCRR Part 679 pertaining to Article 16 clinic services, and add a new 14 NYCRR Subpart 635-13 to identify new requirements pertaining to a new Medicaid State plan service, Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD).

The revised proposed regulations eliminate provision of previously allowed off-site delivery of OPWDD certified Article 16 clinic services to individuals with developmental disabilities effective April 1, 2016. The off-site locations included OPWDD certified residential and day programs and other, non-certified, sites in the community.

The proposed regulations specify that Article 16 clinic services must only be delivered at sites that are specifically certified to provide those services. The regulations clarify requirements pertaining to satellite sites where on-site clinic services may be provided. The regulations clarify that the satellite sites can occupy dedicated or designated spaces and can be co-located with another OPWDD certified or funded non-residential program or services under certain conditions.

The proposed regulations also include requirements pertaining to the provision of IPSIDD on and after the effective date of the regulations. IPSIDD services are limited to physical, occupational, and speech therapy; social work; and psychology services that may be provided to individuals in service arrangements subject to prior authorization from OPWDD. The regulations identify requirements on applicability and service definition; eligibility and enrollment of individuals; qualifications for independent practitioners to provide the service; and general provisions for service delivery.

The proposed regulations include amendments to update the name of OPWDD (from OMRDD) and to update the definition of developmental disability in accordance with the updated definition in Mental Hygiene Law section 1.03. The proposed regulations also include corrections to a number of cross references and minor grammar and punctuation edits.

The proposed regulations are being revised to accommodate a later effective date and to clarify the intent of certain requirements in response to public comments. The revisions clarify requirements concerning 1) the prohibition of duplicative services; 2) the coordination of the provision of IPSIDD services; and 3) the provision of behavioral intervention and support services that are directly related to the residential habilitation plan.

Revised rule compared with proposed rule: Substantial revisions were made in sections 635-10.4, 671.5, Subpart 635-13 and Part 679.

Text of revised proposed rule and any required statements and analyses may be obtained from Office of Counsel, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, Albany, NY 12229, (518) 474-7700, email: RAU.unit@opwdd.ny.gov

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

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has

determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Revised Regulatory Impact Statement

1. Statutory authority:

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

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

c. OPWDD has the statutory authority to adopt regulations concerning the operation of programs and the provision of services, as stated in the NYS Mental Hygiene Law Section 16.00.

2. Legislative objectives: The proposed regulations further the legislative objectives embodied in sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law. The proposed regulations make changes to Article 16 clinic services, by eliminating provision of "off-site" clinic services in accordance with a mandate from CMS; clarifying requirements pertaining to satellite sites where on-site clinic services may be provided; and adding requirements pertaining to Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD), a new State plan service.

3. Needs and benefits: In an effort to align OPWDD's service delivery system with CMS requirements, OPWDD is eliminating provision of previously allowed off-site delivery of OPWDD certified Article 16 clinic services to individuals with developmental disabilities. The off-site locations included OPWDD certified residential and day programs and other, non-certified, sites in the community. CMS has mandated that Article 16 clinic services must only be delivered at sites that are specifically certified to provide those services.

The proposed regulations clarify requirements pertaining to Article 16 clinic satellite sites where on-site clinic services may be provided. The regulations clarify that the satellite sites can occupy dedicated or designated spaces and can be co-located with another OPWDD certified or funded non-residential program or services under certain conditions.

The proposed regulations also include requirements pertaining to a new State plan service, Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD) that may be provided to individuals with developmental disabilities, including those who previously received off-site Article 16 clinic services. The services are limited to physical, occupational, and speech therapy; social work; and psychology services that may be provided to individuals in service arrangements as defined in the regulations.

OPWDD expects that increased use of Article 16 clinic satellite sites and introduction of IPSIDD will offset the loss of off-site Article 16 clinic services.

The proposed regulations also include amendments to update the name of OPWDD (from OMRDD) and to update the definition of developmental disability in accordance with the updated definition in Mental Hygiene Law section 1.03. The proposed regulations also include corrections to a number of cross references and minor grammar and punctuation edits.

The proposed regulations are being revised to accommodate a later effective date and to clarify the intent of certain requirements in response to public comments. The revisions clarify requirements concerning 1) the prohibition of duplicative services; 2) the coordination of the provision of IPSIDD services; and 3) the provision of behavioral intervention and support services that are directly related to the residential habilitation plan. These clarifications are necessary to prevent confusion among providers on how to implement the requirements.

4. Costs:

a. Costs to the Agency and to the State and its local governments: OPWDD cannot estimate how much these regulations will cost the State in its role of Medicaid payor, or in its role of Medicaid provider. Although Medicaid funding streams will change in accordance with CMS mandates (i.e., Article 16 clinics will receive funding only for services provided in sites that are specifically certified to provide those services), OPWDD expects that individuals will be provided with the same clinical services through other OPWDD funded services (i.e., IPSIDD) and/or in other service environments (i.e., certified Article 16 clinic satellite sites). If all the current off-site clinic services are delivered in clinic satellite sites, the regulation will not increase or decrease overall spending. If some or all off-site clinic services are replaced by IPSIDD services, there will be an increase or decrease in State costs, depending on whether the IPSIDD fees are higher or lower than the current off-site clinic fees. However, OPWDD cannot quantify potential savings or spending increases because OPWDD cannot predict the extent to which IPSIDD will replace off-site clinic services.

The proposed regulations will have no effect on local governments. Even if the proposed regulations lead to an increase in Medicaid expendi-

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

b. Costs to private regulated parties: Non-state operated Article 16 clinic providers may incur some loss of revenue associated with the elimination of off-site services. However, OPWDD has been informed that many Article 16 clinic service providers plan to establish additional clinic satellite sites to provide services that had previously been provided at off-site locations. (Services provided at satellite sites will be reimbursed at the same level as the off-site services.) There may also be some initial costs associated with establishing these new satellite sites, but OPWDD has been informed that most providers plan to apportion existing space used for other services as dedicated or designated satellite site space. In addition, clinicians (including clinicians employed by Article 16 clinic providers) may form separate group practices that will enable them to provide IPSIDD in certain residential and day services environments where off-site clinic services were provided before the effective date of these regulations.

OPWDD cannot quantify future potential savings or costs. However, the increased number of Article 16 clinic satellite sites and availability of IPSIDD will provide eligible individuals with new options for obtaining clinical services.

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

6. Paperwork: The proposed regulations will result in some minor additional paperwork for service coordination staff and other providers to disenroll individuals from off-site Article 16 clinic services and obtain or enroll the individuals in other clinical service options. The regulations are not expected to have any long term effect on paperwork responsibilities.

7. Duplication: The proposed regulations do not duplicate any existing State or Federal requirements that are applicable to these services.

8. Alternatives: OPWDD considered not issuing regulations concerning IPSIDD, but determined that regulations, particularly requirements for establishment of IPSIDD clinician qualifications, are in the best interests of individuals receiving services.

9. Federal standards: The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: OPWDD plans to permanently adopt the revised proposed regulations effective April 1, 2016. OPWDD conducted comprehensive statewide provider training on clinic services changes during July 2015 and September 2015. Additional training sessions were held during September 2015 and January 2016.

Revised Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that most OPWDD-funded services are provided by non-profit agencies that employ more than 100 people overall. However, some smaller agencies that employ fewer than 100 employees overall would be classified as small businesses. Currently, there are approximately 59 providers of Article 16 clinic services that may be affected by these regulations. OPWDD is unable to estimate the portion of these agencies that may be considered to be small businesses.

The proposed regulations have been reviewed by OPWDD in light of their impact on small businesses. The proposed regulations make changes to Article 16 clinic services, by eliminating provision of "off-site" clinic services in accordance with a mandate from CMS; clarifying requirements pertaining to satellite sites where on-site clinic services may be provided; and adding requirements pertaining to Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD), a new State plan service.

2. Compliance requirements: The proposed regulations will impose new compliance requirements on Article 16 clinic providers. OPWDD is eliminating provision of previously allowed off-site delivery of OPWDD certified Article 16 clinic services to individuals with developmental disabilities. The off-site locations included OPWDD certified residential and day programs and other, non-certified, sites in the community. CMS has mandated that the Article 16 clinic services must only be delivered at sites that are specifically certified to provide those services. However, OPWDD understands that many Article 16 clinic service providers plan to establish clinic satellite sites to provide services that had previously been provided at off-site locations and, therefore, will have to comply with requirements applicable to operation of satellite sites. Clinicians, including those working for Article 16 clinic providers, may also form separate group practices that will enable them to provide IPSIDD in certain residential and day services environments where off-site clinic services were provided before the effective date of the regulations. These clinicians will be required to meet new IPSIDD participation requirements.

The amendments will have no effect on local governments.

3. Professional services: OPWDD expects that there will be no significant change in professional services required as a result of these amendments. Although Medicaid funding streams will change in accordance with CMS mandates (i.e., Article 16 clinics will receive funding only for services provided in sites that are specifically certified to provide those services), OPWDD expects that individuals will be provided with the same clinical services through other OPWDD funded services (i.e., IPSIDD) and/or in other service environments (i.e., certified Article 16 clinic satellite sites). Therefore, OPWDD expects that the same relative number of clinicians will be providing the services in the new service delivery arrangements.

4. Compliance costs: Non-state operated Article 16 clinic providers may incur some loss of revenue associated with the elimination of off-site services. However, OPWDD understands that many Article 16 clinic service providers plan to establish additional clinic satellite sites to provide services that had previously been provided at off-site locations. (Services provided at satellite sites will be reimbursed at the same level as the off-site services.) There may also be some initial costs associated with establishing these new satellite sites, but OPWDD has been informed that most providers plan to apportion existing space used for other services as dedicated or designated satellite site space. In addition, clinicians working for Article 16 clinic providers may form separate group practices that will enable them to provide IPSIDD in certain residential and day services environments where off-site clinic services were provided before the effective date of the regulations.

OPWDD cannot quantify future potential savings or costs. However, the increased number of conveniently located Article 16 clinic satellite sites and availability of IPSIDD will provide individuals who are eligible for the services with new options to obtain the clinical services they need.

5. Economic and technological feasibility: The proposed regulations do not impose the use of any new technological processes on regulated parties.

6. Minimizing adverse impact: The purpose of these proposed regulations is to eliminate off-site Article 16 clinic services in accordance with CMS mandates and to enable providers of Article 16 clinic services to make alternative clinical service arrangements available to individuals with developmental disabilities. As noted above, OPWDD cannot quantify future potential savings or costs. However, the increased number of conveniently located Article 16 clinic satellite sites and availability of IPSIDD will provide individuals who are eligible for the services with new options to obtain the clinical services they need.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act (SAPA). However, since the regulations are needed to conform OPWDD's service delivery system with CMS requirements and to honor commitments made to CMS, OPWDD did not establish different compliance, reporting requirements or timetables on small business providers or local governments or exempt small business providers or local governments from these requirements and timetables.

7. Small business participation: Providers, including providers that have fewer than 100 employees, were notified of the changes to Article 16 clinic services during comprehensive statewide provider trainings conducted in July 2015, September 2015, and January 2016.

Revised Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: OPWDD services are provided in every county in New York State. 44 counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

The proposed amendments have been reviewed by OPWDD in light of their impact on entities in rural areas. The proposed regulations make changes to Article 16 clinic services, by eliminating provision of "off-site" clinic services in accordance with a mandate from CMS; clarifying requirements pertaining to satellite sites where on-site clinic services may be provided; and adding requirements pertaining to Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD), a new State plan service.

2. Compliance requirements: The proposed regulations will impose new compliance requirements on Article 16 clinic providers. OPWDD is eliminating provision of previously allowed off-site delivery of OPWDD certified Article 16 clinic services to individuals with developmental disabilities. The off-site locations included OPWDD certified residential

and day programs and other, non-certified, sites in the community. CMS has mandated that the Article 16 clinic services must only be delivered at sites that are specifically certified to provide those services. However, OPWDD understands that many Article 16 clinic service providers plan to establish clinic satellite sites to provide services that had previously been provided at off-site locations and, therefore, will have to comply with requirements applicable to operation of satellite sites. Clinicians, including those employed by Article 16 clinic providers, may also form separate group practices that will enable them to provide IPSIDD in certain residential and day services environments where off-site clinic services were provided before the effective date of the regulations. These clinicians will be required to meet new IPSIDD participation requirements.

The amendments will have no effect on local governments.

3. Professional services: OPWDD expects that there will be no significant change in professional services required as a result of these amendments. Although Medicaid funding streams will change in accordance with CMS mandates (i.e., Article 16 clinics will receive funding only for services provided in sites that are specifically certified to provide those services), OPWDD expects that individuals will be provided with the same clinical services through other OPWDD funded services (i.e., IPSIDD) and/or in other service environments (i.e., certified Article 16 clinic satellite sites). Therefore, OPWDD expects that the same relative number of clinicians will be providing the services in the new service delivery arrangements.

4. Compliance costs: Non-state operated Article 16 clinic providers may incur some loss of revenue associated with the elimination of off-site services. However, OPWDD understands that many Article 16 clinic service providers plan to establish additional clinic satellite sites to provide services that had previously been provided at off-site locations. (Services provided at satellite sites will be reimbursed at the same level as the off-site services.) There may also be some initial costs associated with establishing these new satellite sites, but OPWDD understands that most providers plan to apportion existing space used for other services as dedicated or designated satellite site space. In addition, clinicians, including those working for Article 16 clinic providers, may form separate group practices that will enable them to provide IPSIDD in certain residential and day services environments where off-site clinic services were provided before the effective date of the regulations.

OPWDD cannot quantify future potential savings or costs. However, the increased number of conveniently located Article 16 clinic satellite sites and availability of IPSIDD will provide individuals who are eligible for the services with new options to obtain the clinical services they need.

5. Minimizing adverse economic impact: The purpose of these proposed regulations is to eliminate off-site Article 16 clinic services in accordance with CMS mandates and to enable providers of Article 16 clinic services to make alternative clinical service arrangements available to individuals with developmental disabilities. As noted above, OPWDD cannot quantify future potential savings or costs. However, the increased number of conveniently located Article 16 clinic satellite sites and availability of IPSIDD will provide individuals who are eligible for the services with new options to obtain the clinical services they need.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act (SAPA). However, since the regulations are needed to conform OPWDD's service delivery system with CMS requirements and to honor commitments made to CMS, OPWDD did not establish different compliance, reporting requirements or timetables on rural area providers or exempt rural area providers from these requirements and timetables.

6. Participation of public and private interests in rural areas: Providers, including rural area providers, were notified of the changes to Article 16 clinic services during comprehensive statewide provider trainings conducted in July 2015, September 2015 and January 2016.

Revised Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The proposed regulations make changes to Article 16 clinic services, by eliminating provision of "off-site" clinic services in accordance with a mandate from CMS; clarifying requirements pertaining to satellite sites where on-site clinic services may be provided; and adding requirements pertaining to Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD), a new State plan service.

OPWDD expects that there will be no significant change in jobs for clinicians (or other staff) required as a result of these amendments. Although Medicaid funding streams will change in accordance with CMS mandates (i.e., Article 16 clinics will receive funding only for services provided in sites that are specifically certified to provide those services), OPWDD expects that individuals will be provided with the same clinical services through other OPWDD funded services (i.e., IPSIDD) and/or in

other service environments (i.e., certified Article 16 clinic satellite sites). Therefore, OPWDD expects that the same relative number of clinicians will be providing the services in the new service delivery arrangements.

Consequently, these proposed regulations will not have a substantial adverse impact on jobs or employment opportunities.

Assessment of Public Comment

This document contains responses to public comments submitted during the public comment period for proposed regulations concerning clinic treatment service locations and IPSIDD. OPWDD received public comments from four commenters.

Comment: Some commenters sought the inclusion of additional program requirements with respect to IPSIDD in the proposed regulations (e.g. background checks and executive director sign off of IPSIDD services provided in residences).

Response: IPSIDD regulations are issued pursuant to OPWDD's authority regarding rate setting as found in Mental Hygiene Law Section 43.02. Consistent with that authority, the proposed regulations would provide qualified practitioners with the ability to access enhanced rates when they provide services to individuals with developmental disabilities. In contrast, IPSIDD services are not themselves licensed or certified under OPWDD's regulatory jurisdiction; therefore, OPWDD does not have authority to create additional program requirements such as background checks.

Comment: A commenter noted a potential conflict between certain Public Health Law provisions and language in the proposed regulation which would prohibit the provision of clinic services "available" under the Early Intervention (EI) program. The commenter suggested that the exclusion from IPSIDD of services covered by the EI program and by other programs be deleted from the regulation, or that the proposed regulation be revised to prohibit duplication for services that are "provided" by the EI program, and not merely "available" from that program.

Response: The proposed regulations in paragraph 679.1(c)(7) and subdivision 635-13.4(c) have been revised to address these concerns.

The proposed regulations also have been revised to include changes to paragraph 679.1(c)(4) and subdivision 635-13.4(d) with respect to duplication of services.

Comment: A commenter suggested that language be added to the paragraph 679.1(c)(4) to allow an exception to the provision of duplicative services when "the person's needs so warrant". The commenter advised that the medical necessity, goals and justification for the services could be for different reasons (educational vs clinical) and in different settings.

Response: Paragraph 679.1(c)(4) and subdivisions 635-13.4(c) and (d) of the proposed regulations have been revised to address these concerns.

Comment: A commenter suggested that Behavior Analysts should be allowed to deliver services independently because they are licensed pursuant to Article 167 of the Education Law. The same commenter suggested the addition of "behavioral analysis" to the list of IPSIDD services in the proposed regulations.

Response: Currently, the Behavioral Analyst credential is not recognized by Medicare and Medicaid as a licensed party. As such, the proposed regulation will not be revised to accommodate this suggestion.

Comment: A commenter questioned the need for Licensed Psychologists to supervise Licensed Mental Health Counselors (LMHCs) as required in the proposed regulations.

Response: The LMHC is not recognized by the Department of Health as an independent practitioner. The minimum training and coursework requirements for licensure of LMHCs are insufficient for access to the enhanced rate under IPSIDD. As such, the proposed regulation will not be revised to accommodate this suggestion.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sale of Certain Transmission Project Assets from Con Edison and O&R to NY Transco

I.D. No. PSC-05-16-00004-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 of Consolidated Edison Company of New York and Orange and Rockland Utilities, Inc. to transfer certain transmission facilities, related property rights and financial interests to NY Transco, LLC.

Statutory authority: Public Service Law, section 70

Subject: Sale of certain transmission project assets from Con Edison and O&R to NY Transco.

Purpose: To consider the sale of assets from Con Edison and O&R to NY Transco.

Substance of proposed rule: The New York State Public Service Commission is considering a petition from Consolidated Edison Company of New York (Con Edison), and Orange and Rockland Utilities, Inc. (O&R) requesting approval of the sale of assets related to the Ramapo to Rock Tavern 345 kV line transmission project (O&R service territory) and the Staten Island unbottling transmission project (Con Edison service territory) to NY Transco, LLC. The assets consist of certain transmission facilities, easements, rights-of-way, and related books, records and accounts. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: John.Pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(16-E-0013SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sale of Certain Assets Relating to the Fraser to Coopers Corner Transmission Project from NYSEG to the NY Transco

I.D. No. PSC-05-16-00005-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 of New York State Electric & Gas Corp. to transfer certain transmission facilities, related property rights and financial interests to NY Transco, LLC.

Statutory authority: Public Service Law, section 70

Subject: Sale of certain assets relating to the Fraser to Coopers Corner transmission project from NYSEG to the NY Transco.

Purpose: To consider the sale of assets from NYSEG to the NY Transco.

Substance of proposed rule: The New York State Public Service Commission is considering a petition of New York State Electric & Gas Corp. requesting approval of the sale of assets related to the Fraser to Coopers Corner transmission project to NY Transco, LLC. The assets consist of certain transmission facilities, easements, rights-of-way, and related books, records and accounts in connection with the Fraser to Coopers Corner transmission project in New York State. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: John.Pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(16-E-0012SP1)

State University of New York

NOTICE OF ADOPTION

College Tuition and Fees

I.D. No. SUN-47-15-00005-A

Filing No. 70

Filing Date: 2016-01-14

Effective Date: 2016-02-03

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

Action taken: Amendment of section 602.10 of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(1)(c) and 6305(8)

Subject: College tuition and fees.

Purpose: To amend the tuition and fees to allow for resident or in-state tuition to certain veterans and their dependents.

Text or summary was published in the November 25, 2015 issue of the Register, I.D. No. SUN-47-15-00005-EP.

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

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Assessment of Public Comment

The agency received no public comment.

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

University Faculty Senate

I.D. No. SUN-05-16-00001-P

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

Proposed Action: Amendment of sections 331.8 and 331.9 of Title 8 NYCRR.

Statutory authority: Education Law, sections 353 and 355(2)(b)

Subject: University Faculty Senate.

Purpose: To amend amend the Policies of the Board of Trustees regarding the University Faculty Senate.

Text of proposed rule: 8 NYCRR Part 331. University Faculty Senate

Title C – OFFICERS

331.8 President of the senate. Before July 1st of each odd-numbered year, the senate shall elect one of its elected members or the current Vice-President/secretary as President of the senate for a term of two years. Upon election as President of the senate, [the] an elected member shall vacate the position as the representative of his or her unit in the senate. The President of the senate shall preside at all meetings of the senate and shall exercise such other powers and duties as may be vested in the President by this Part and the bylaws of the senate. The President shall be an ex officio member of all senate committees. The President of the senate may be reelected for a second term, but may not thereafter be eligible for a successive term[.] provided however that a President initially elected to fill the minor portion of a term arising from a vacancy is eligible to serve two additional successive full terms.

331.9 Vice president/Secretary. Before July 1st of each even-numbered year, the senate shall elect one of its elected members to serve as Vice-President/Secretary for a term of two years. Upon election as Vice-President/Secretary, the elected member shall vacate the position as representative of his or her unit in the senate and shall serve as a nonvoting member of the senate. The vice president/secretary shall take and keep minutes of the senate and shall exercise such other powers and duties as the senate shall provide in its bylaws. The vice president/secretary shall serve as president of the senate during that officer's absence or inability to act. [Any regular member of the senate is eligible to serve as vice president/secretary for one year beyond the expiration of his or her three-year term as a senate member. In such case, the vice president/secretary shall become a nonvoting member of the senate and the unit shall be

represented by a regularly elected successor.] *The Vice-President/Secretary of the senate may be reelected for a second term, but may not thereafter be eligible for a successive term provided however that a Vice-President/Secretary initially elected to fill the minor portion of a term arising from a vacancy is eligible to serve two additional successive full terms.*

Text of proposed rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, S-325, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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: Education Law, 355(2)(b). Section 355(2)(b) authorizes the State University Board of Trustees (“SUNY Board”) to make and amend rules and regulations for the governance of the State University and institutions therein.

2. Legislative Objectives: The present measure supports the SUNY Board’s legislative authority over governance of the University, specifically faculty governance. The SUNY’s Board’s policies, codified in Title 8 of New York Codes of Rules and Regulations Part 331, established a University Faculty Senate through which SUNY’s faculty engages in the governance of SUNY.

3. Needs and Benefits: The present measure amends the SUNY Board’s rules relating to the University Faculty Senate which amendments are deemed necessary by the membership of the University Faculty Senate and the SUNY Board.

4. Costs: There are no costs associated with the present measure.

5. Local Government Mandates: There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

6. Paperwork: No parties will experience any new reporting responsibilities. The State University of New York Policies of the Board of Trustees will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: None.

9. Federal Standards: None.

10. Compliance Schedule: None.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, record-keeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs the University Faculty Senate of State University of New York and will not have any adverse impact on the number of jobs or employment.

Department of Taxation and Finance

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

City of New York Withholding Tables and Other Methods

I.D. No. TAF-05-16-00002-EP

Filing No. 72

Filing Date: 2016-01-15

Effective Date: 2016-01-15

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

Proposed Action: Amendment of Appendix 10-C of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 671(a)(1), 697(a), 1309 and 1312(a); Administrative Code of the City of New York, sections 11-1771(a) and 11-1797(a); and L. 2015, ch. 59, part B

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

Specific reasons underlying the finding of necessity: As part of the enacted Budget legislation, Part B of Chapter 59 of the Laws of 2015 made certain changes to the personal income tax law that require the Commissioner to adjust the withholding tables and other methods in Appendix 10-C of 20 NYCRR, and to promulgate rules to implement the changes as soon as practicable. Section 4 of Part B specifically authorizes emergency action to adopt rules implementing these changes. These rules are being adopted on an emergency basis in accordance with the requirement that rules be adopted and effective as soon as practicable. Specifically, the amendments to Appendix 10-C reflect the revision of the City of New York tax tables in accordance with the increased rate of New York City personal income tax applicable to income over \$500,000 enacted by Part B of Chapter 59 of the Laws of 2015, implemented over a twelve month period for the 2016 tax year, rather than the shorter implementation period required for tax year 2015, and the requirement that the withholding rates reflect the full amount of tax liability as accurately as practicable. The amendments also make technical changes to reformat and repaginate the tables.

Subject: City of New York withholding tables and other methods.

Purpose: To provide current City of New York withholding tables and other methods.

Substance of emergency/proposed rule (full text is posted at the following State website: <http://www.tax.ny.gov>): Section 1309 of the Tax Law and section 11-1771 of the Administrative Code of the City of New York mandate that employers withhold from employee wages amounts that are substantially equivalent to the amount of City of New York personal income tax on residents reasonably estimated to be due for the taxable year. The provisions authorize the Commissioner of Taxation and Finance to provide for withholding of these taxes through regulations promulgated by the Commissioner.

This rule repeals and replaces Appendix 10-C of Title 20 NYCRR, New York City Personal Income Tax on Residents Withholding Tables and Other Methods of such Title, to provide new City of New York withholding tables and other methods. The amendments to Appendix 10-C reflect the revision of the City of New York tax tables in accordance with the increased rate of New York City personal income tax applicable to income over \$500,000 enacted by Part B of Chapter 59 of the Laws of 2015, implemented over a twelve month period for the 2016 tax year, rather than the shorter implementation period required for tax year 2015, and the requirement that the withholding rates reflect the full amount of tax liability as accurately as practicable.

The rule applies to wages and other compensation subject to withholding paid on or after January 1, 2016.

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 March 14, 2016.

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist I, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: Kathleen.OConnell@tax.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:** Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 671(a)(1) provides that the method of determining the amounts of New York State personal income tax to be withheld will be prescribed by regulations promulgated by the Commissioner; section 697(a) provides the authority for the Commissioner to make such rules and regulations as are necessary to enforce the personal income tax; section 1309 (not subdivided) provides that City of New York personal income tax withholding shall be withheld from city residents in the same manner and form as that required by New York State; section 1312(a) provides that any personal income tax imposed on New York City residents by the City of New York shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law, except where noted; Administrative Code of the City of New York, section 11-1771(a) provides that the method of determining the amount of City tax withholding will be prescribed by regulations promulgated by the Commissioner; section 11-1797(a) provides for the Commissioner to make such rules and regulations that are necessary to enforce the provisions of the Administrative Code of the City of New York. Section 4 of Part B of Chapter 59 of the Laws of 2015 requires the Commissioner to adopt rules to implement changes in the withholding tax tables and methods relating to the personal income tax increases made by Part B.

2. **Legislative objectives:** The rule amends Appendix 10-C related to the exact calculation method (Method II) for the City of New York personal income tax on residents for withholding purposes as required by Chapter 59 of the Laws of 2015. Because the income tax changes made by Chapter 59 relate to taxpayers with incomes over certain amounts, the wage bracket table method (Method I) tables are not affected. The amendments implement revised City of New York withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2016. Specifically, the amendments reflect the increased rate of New York City personal income tax applicable to income over \$500,000 provided in Part B of Chapter 59, implemented over a twelve month period for the 2016 tax year, rather than the shorter implementation period required for tax year 2015. The rule also makes technical changes to reformat and repaginate the tables.

3. **Needs and benefits:** This rule sets forth amendments to the City of New York withholding tables and other methods, applicable to wages and other compensation paid on or after January 1, 2016, reflecting the revision of the tax rates contained in Part B of Chapter 59 of the Laws of 2015. This rule benefits taxpayers by providing City of New York withholding rates that more accurately reflect the current income tax rates. If this rule is not promulgated, the use of the existing withholding tables would cause some under-withholding for some taxpayers.

4. **Costs:** (a) Costs to regulated parties for the implementation and continuing compliance with this rule: Since (i) the Tax Law and the Administrative Code of the City of New York already mandate withholding in amounts that are substantially equivalent to the amounts of City of New York personal income tax on residents reasonably estimated to be due for the taxable year, and (ii) this rule conforms Appendix 10-C of Title 20 NYCRR to the rates of the City of New York personal income tax on residents, as required by Chapter 59 of the Laws of 2015, any compliance costs to employers associated with implementing the revised withholding tables and other methods are due to such statutes, and not to this rule.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to make amendments to the New York City Personal Income Tax on Residents Regulations and to Appendix 10-C arises due to the statutory changes in the rates of the City of New York personal income tax on residents, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) **Information and methodology:** This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Taxpayer Guidance Division, Office of Tax Policy Analysis, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. **Local government mandates:** Local governments, as employers, would be required to implement the new withholding tables and other methods in the same manner and at the same time as any other employer.

6. **Paperwork:** This rule will not require any new forms or information. The reporting requirements for employers are not changed by this rule. Employers will be notified of the amendments to the tables and other methods and directed to the Department's website for the updated tables and other methods.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since section 11-1771(a) of the Administrative Code of the City of New York and Chapter 59 of the Laws of 2015 require that withholding tables and other methods be promulgated, there are no viable alternatives to providing such tables and other methods.

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

10. Compliance schedule: The required information will be made available to affected employers in sufficient time to implement the revised City of New York withholding tables and other methods for wages and other compensation paid on or after January 1, 2016.

Regulatory Flexibility Analysis

1. Effect of rule: Small businesses, within the meaning of the State Administrative Procedure Act, that are currently subject to the City of New York withholding requirements will continue to be subject to these requirements. This rule should, therefore, have little or no effect on small businesses other than the requirement of conforming to the new withholding tables and other methods. All small businesses that are employers or are otherwise subject to the withholding requirements must comply with the provisions of this rule.

2. Compliance requirements: This rule requires small businesses and local governments that are already subject to the City of New York withholding requirements to continue to deduct and withhold amounts from employees using the revised City of New York withholding tables and other methods. The promulgation of this rule will not require small businesses or local governments to submit any new information, forms, or paperwork.

3. Professional services: Many small businesses currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of such services.

4. Compliance costs: Small businesses and local governments are already subject to the City of New York withholding requirements. Therefore, small businesses and local governments are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York, and City of Yonkers purposes. As such, these changes should place no additional burdens on small businesses and local governments. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

5. Economic and technological feasibility: This rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: Section 671(a)(1) of the Tax Law mandates that New York State withholding tables and other methods be promulgated. Section 1309 of the Tax Law mandates, in part, that the City of New York withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law. There are no provisions in the Tax Law that exclude small businesses and local governments from the withholding requirements. The regulation provides some relief to small businesses and local governments with respect to the methods allowed to comply with the withholding requirements by continuing to provide employers with more than one method of computing the amount to withhold from their employees. Look-up tables are provided for employers who prepare their payrolls manually, and an exact calculation method is provided for employers with computer-based systems.

7. Small business and local government participation: The following organizations were given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of the New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Committee of the New York State Business Council; the Retail Council of New York State; and the New York Association of Convenience Stores; the Tax Section of the New York State Bar Association; the Association of the Bar of the City of New York; the New York State Society of Enrolled Agents; the New York State Society of CPAs; and the Taxation Committee of the Business Council of New York State. In addition, the City of New York was consulted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Every employer, including any public or private employer located in a rural area as defined in section 102(10) of the State Administrative Procedure Act, that is currently subject to the City of New York withholding requirements will continue to be subject to such requirements and will be required to comply with the provisions of this rule. The number of employers that are also public or private interests in rural areas cannot be determined with any degree of

certainty. The effect on employers in rural areas is minimized because the changes relate to the New York City personal income tax on residents withholding requirements. There are 44 counties throughout this State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This rule requires employers that are already subject to the City of New York withholding requirements to continue to deduct and withhold amounts from employees using the revised withholding tables and other methods. The promulgation of this rule will not require employers to submit any new information, forms, or other paperwork.

Further, many employers currently utilize bookkeepers, accountants, and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of any such services.

3. Costs: Employers are already subject to the City of New York withholding requirements. Therefore, employers are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York, and City of Yonkers purposes. As such, these City of New York changes should place no additional burdens on employers located in rural areas. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

4. Minimizing adverse impact: Section 11-1771(a) of the Administrative Code of the City of New York mandates that City of New York State withholding tables and other methods be promulgated. There are no provisions in the Tax Law or the Administrative Code of the City of New York that exclude employers located in rural areas from the withholding requirements.

5. Rural area participation: The following organizations are being given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Committee of the Business Council of New York State; the Retail Council of New York State; the New York Association of Convenience Stores; the Tax Section of the New York State Bar Association; the Association of the Bar of the City of New York; the New York State Society of Enrolled Agents; the New York State Society of CPAs; and the Taxation Committee of the Business Council of New York State. In addition, the City of New York was consulted.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities. The purpose of the rule is to provide City of New York withholding tables and other methods, applicable for compensation paid on or after January 1, 2016, which reflect the revision of the New York City rate enacted pursuant to Chapter 59 of the Laws of 2015.