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 Civil Service

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Civil Service publishes a new notice of proposed rule making in the NYS *Register*.

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-01-15-00023-P	January 7, 2015	January 7, 2016

Education Department

EMERGENCY RULE MAKING

Annual Professional Performance Reviews of Classroom Teachers and Building Principals

I.D. No. EDU-27-15-00019-E
Filing No. 62
Filing Date: 2016-01-12
Effective Date: 2016-01-23

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

Action taken: Amendment of section 100.2(o) and Subpart 30-2; and addition of Subpart 30-3 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1), (2), 3009(1), 3012-c(1-10) and 3012-d(1-15); L. 2015, chs. 20 and 56, part EE, subparts D and E

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement Education Law sections 3012-c and 3012-d, as amended and added by Subpart E of Part EE of Chapter 56 of the Laws of 2015, regarding annual professional performance reviews (APPRs) of classroom teachers and building principals.

The proposed amendment was adopted by emergency action at the June 15-16, 2015 Board of Regents meeting. A Notice of Proposed Rule Making was published in the State Register on July 8, 2015. The Department subsequently revised the proposed rule to address public comment received. A Notice of Revised Rule Making was published in the State Register on October 7, 2015. The Board of Regents adopted the revised rule as an emergency measure at its September and November meetings, effective September 28, 2015 and November 27, 2015. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, would be the January 11-12, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the January meeting, would be January 27, 2016, the date a Notice of Adoption would be published in the State Register.

However, the November emergency rule will expire on January 22, 2016, 60 days after its filing with the Department of State. Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed amendment adopted by emergency action at the June Regents meeting and revised at the September and November 2015 Regents meetings, remains continuously in effect until the effective date of its permanent adoption in order to timely implement provisions of Subpart E of Part EE of Chapter 56 of the Laws of 2015 relating to a new annual evaluation system for classroom teachers and building principals.

Subject: Annual Professional Performance Reviews of Classroom Teachers and Building Principals.

Purpose: To Implement subparts D and E of part EE of chapters 20 and 56 of the Laws of 2015.

Text of emergency rule: 1. Subparagraph (ii) of paragraph (1) of section 100.2(o) of the Commissioner's regulations is amended, effective January 23, 2016, to read as follows:

(ii) Annual review. The governing body of each school district and BOCES shall ensure that the performance of all teachers providing instructional services or pupil personnel services, as defined in section 80-1.1 of this Title, is reviewed annually in accordance with this subdivision, except evening school teachers of adults enrolled in nonacademic, vocational subjects; and supplementary school personnel, as defined in section 80-5.6 of this Title, and any classroom teacher subject to the evaluation requirements prescribed in [Subpart] *Subparts* 30-2 *and 30-3* of this Title.

2. The title of Subpart 30-2 of the Rules of the Board of Regents is amended effective January 23, 2016, to read as follows:

SUBPART 30-2

ANNUAL PROFESSIONAL PERFORMANCE REVIEWS OF CLASSROOM TEACHERS AND BUILDING PRINCIPALS *CONDUCTED PRIOR TO THE 2015-2016 SCHOOL YEAR OR FOR ANNUAL PROFESSIONAL PERFORMANCE REVIEWS CONDUCTED PURSUANT TO A COLLECTIVE BARGAINING AGREEMENT ENTERED INTO ON OR BEFORE APRIL 1, 2015 WHICH REMAINS IN EFFECT ON OR AFTER APRIL 1, 2015 UNTIL A SUBSEQUENT AGREEMENT IS REACHED*

3. Subdivision (b) of section 30-2.1 of the Rules of the Board of Regents is amended, effective January 23, 2016, to read as follows:

(b) For annual professional performance reviews conducted by school

districts or BOCES [in] *from* the 2012-2013 school year [and any school year thereafter] *through the 2015-2016 school year or for any annual professional performance review conducted pursuant to a collective bargaining agreement entered into on or before April 1, 2015 that remains in effect on and after April 1, 2015 until a successor agreement is reached*, the governing body of each school district and BOCES shall ensure that the reviews of all classroom teachers and building principals are conducted in accordance with the requirements of section 3012-c of the Education Law and the provisions of this Subpart.

4. Subdivision (d) of section 30-2.1 of the Rules of the Board of Regents is amended, effective January 23, 2016, to read as follows:

(d) Annual professional performance reviews of classroom teachers and building principals conducted pursuant to this Subpart shall be a significant factor for employment decisions, including but not limited to, promotion, retention, tenure determinations, termination and supplemental compensation, in accordance with Education Law § 3012-c(1). Nothing in this Subpart shall be construed to affect the unfettered statutory right of a school district or BOCES to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reasons [other than the performance of the teacher or principal in the classroom or school,] including but not limited to misconduct*, and until a tenure decision is made, the performance of the teacher or principal in the classroom or school*. [For purposes of this subdivision, Education Law § 3012-c(1) and (5)(b), performance shall mean a teacher's or principal's overall composite rating pursuant to an annual professional performance review conducted under this Subpart.]

5. Subdivision (c) of section 30-2.11 of the Rules of the Board of Regents is amended, effective January 23, 2016, to read as follows:

(c) Nothing in this section shall be construed to alter or diminish the authority of the governing body of a school district or BOCES to grant or deny tenure to or terminate probationary teachers or probationary building principals during the pendency of an appeal pursuant to this section for statutorily and constitutionally permissible reasons [other than] *including* the teacher's or principal's performance that is the subject of the appeal.

6. A new section 30-2.13 of the Rules of the Board of Regents is added, effective January 23, 2016, to read as follows:

§ 30-2.13. Challenges to State-Provided Growth Score Results for the 2014-2015 School Year and Thereafter.

(a) A teacher/principal shall have the right to challenge their State-provided growth score under this Subpart; provided that the teacher/principal provides sufficient documentation that he/she meets at least one of the following criteria in their annual evaluation:

(1) a teacher/principal was rated Ineffective on his/her State-provided growth score and Highly Effective on the other measures of teacher/leader effectiveness subcomponent in the current year and was rated either Effective or Highly Effective on his/her State-provided growth score in the previous year; or

(2) a high school principal of a building that includes at least all of grades 9-12, was rated Ineffective on the State-provided growth score but such percent of students as shall be established by the Commissioner in his/her school/program within four years of first entry into grade 9 received results on department-approved alternative examinations in English Language Arts and/or or mathematics as described in section 100.2(f) of this Title (including, but not limited to, advanced placement examinations, and/or International Baccalaureate examinations, SAT II, etc.) scored at proficiency (i.e., a Level 3 or higher).

(b) A teacher/principal shall submit an appeal to the Department, in a manner prescribed by the Commissioner, within 20 days of receipt of his/her overall annual professional performance review rating or the effective date of this section, whichever is later, and submit a copy of the appeal to the school district and/or BOCES. The school district and/or BOCES shall have ten days from receipt of a copy of such appeal to submit a reply to the Department.

(c) Based on the documentation received, if the Department overturns a teacher's/principal's rating on the State-provided growth score, the district/BOCES shall substitute the teacher's/principal's results on the back-up SLO developed by the district/BOCES for such teacher/principal. If a back-up SLO was not developed, then the teacher's/principal's overall composite score and rating shall be based on the portions of their annual professional performance review not affected by the nullification of the State-provided growth score. Provided, however, that following a successful appeal under paragraph (1) of subdivision (a) of this section, if a back-up SLO is used a teacher/principal shall not receive a score/rating higher than developing on such SLO.

(d) An evaluation that is the subject of an appeal shall not be sought to be offered in evidence or placed in evidence in any proceeding conducted pursuant to Education Law sections 3020-a and 3020-b or any locally negotiated alternate disciplinary procedure until the appeal process is concluded.

(e) Nothing in this section shall be construed to alter or diminish the authority of the governing body of a district to grant or deny tenure to or terminate probationary teachers or probationary building principals during the pendency of an appeal pursuant to this section for statutorily and constitutionally permissible reasons, including the teacher's/principal's performance that is the subject of the appeal.

(f) Nothing in this Subpart shall be construed to authorize a teacher/principal to commence the appeal process prior to receipt of his/her overall rating from the district/BOCES.

(g) During the pendency of an appeal under this section, nothing shall be construed to alter the obligation of a school district/BOCES to develop and implement a teacher improvement plan or principal improvement plan during the pendency of an appeal.

(h) Nothing in this section shall be construed to limit any rights of a teacher/principal under section 30-2.11 of this Subpart.

(i) Notwithstanding any other provision of rule or regulation to the contrary, a high school principal of a building that includes at least all of grades 9-12 who meets either of the criteria in paragraphs (1) or (2) of this subdivision shall not receive a State-provided growth score and shall instead use back-up SLOs:

(1) the principal would be rated Ineffective or Developing on the State-provided growth score but the graduation rate of the students in that school building exceeded 90%, and the proportion of the student population included in either the ELA Regents Median Growth Percentile or the Algebra Regents Median Growth Percentile was less than ten percent of the total enrollment for the school; or the principal

(2) has no Combined Median Growth Percentile rating or score, and the proportion of the student population included in the ELA Regents Median Growth Percentile and Algebra Regents Median Growth Percentile was less than five percent of the total enrollment for the school in one subject, and less than ten percent of the total enrollment in the other subject.

(3) If a back-up SLO was not developed, then the principal's overall composite score and rating shall be based on the remaining portions of their annual professional performance review.

7. A new Subpart 30-3 of the Rules of the Board of Regents shall be added, effective January 23, 2016, to read as follows:

SUBPART 30-3

ANNUAL PROFESSIONAL PERFORMANCE REVIEWS OF CLASSROOM TEACHERS AND BUILDING PRINCIPALS FOR THE 2015-2016 SCHOOL YEAR AND THEREAFTER

§ 30-3.1 Applicability.

(a) For annual professional performance reviews conducted by districts for the 2015-2016 school year and any school year thereafter, the governing body of each district shall ensure that the reviews of all classroom teachers and building principals are conducted in accordance with the requirements of Education Law § 3012-d and this Subpart, except as otherwise provided in subdivision (b) of this section.

(b) The requirements of Education Law § 3012-c and Subpart 30-2 of this Part shall continue to apply to annual professional performance reviews conducted prior to the 2015-2016 school year and thereafter, where such reviews are conducted pursuant to a collective bargaining agreement entered into on or before April 1, 2015 that remains in effect on and after April 1, 2015 until entry into a successor agreement.

(c) In accordance with Education Law § 3012-d(12), all collective bargaining agreements entered into after April 1, 2015 shall be consistent with the requirements of Education Law § 3012-d and this Subpart, unless such agreement related to the 2014-2015 school year only. Nothing in this Subpart shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on and after April 1, 2015 during the term of such agreement and until entry into a successor collective bargaining agreement, provided that notwithstanding any other provision of law to the contrary, upon expiration of such term and the entry into a successor collective bargaining agreement, all the requirements of Education Law § 3012-d and this Subpart shall apply.

(d) Annual professional performance reviews of classroom teachers and building principals shall be a significant factor for employment decisions, including but not limited to, promotion, retention, tenure determination, termination, and supplemental compensation, in accordance with Education Law § 3012-d(1). Such evaluations shall also be a significant factor in teacher and principal development, including but not limited to coaching, induction support, and differentiated professional development.

Nothing herein shall be construed to affect the unfettered statutory right of a district to terminate a probationary (non-tenured) teacher or principal for any statutorily and constitutionally permissible reasons.

(e) The Board of Regents shall convene an assessment and evaluation workgroup or workgroups, comprised of stakeholders and experts in the field to provide recommendations to the Board of Regents on assessments and evaluations that could be used for annual professional performance reviews in the future.

§ 30-3.2 Definitions. As used in this Subpart:

(a) Approved teacher or principal practice rubric shall mean a rubric approved by the commissioner for inclusion on the State Education Department's list of approved rubrics in teacher or principal evaluations.

(b) Approved student assessment shall mean a student assessment approved by the commissioner for inclusion in the State Education Department's lists of approved student assessments to measure student growth for use in the mandatory subcomponent and/or for use in the optional subcomponent of the student performance category.

(1) Approved assessments in grades kindergarten through grade two. Traditional standardized assessments in grades kindergarten through grade two shall not be on the approved list. However, an assessment that is not a traditional standardized assessment shall be considered an approved student assessment if the superintendent, district superintendent, or chancellor of a district that chooses to use such assessment certifies in its annual professional performance review plan that the assessment is not a traditional standardized assessment, and that the assessment meets the minimum requirements prescribed by the Commissioner in guidance.

(c) Classroom teacher or teacher shall mean a teacher in the classroom teaching service as that term is defined in section 80-1.1 of this Title who is a teacher of record as defined in this section, except evening school teachers of adults enrolled in nonacademic, vocational subjects, and supplemental school personnel as defined in section 80-5.6 of this Title.

(d) Common branch subjects shall mean common branch subjects as defined in section 80-1.1 of this Title.

(e) Co-principal means a certified administrator under Part 80 of this Title, designated by the school's controlling authority to have executive authority, management, and instructional leadership responsibility for all or a portion of a school or BOCES-operated instructional program in a situation in which more than one such administrator is so designated. The term co-principal implies equal line authority, with each designated administrator reporting to a district-level or comparable BOCES-level supervisor.

(f) Developing means an overall rating of Developing received by a teacher or building principal, based on the ratings an educator received in the student performance category and observation/school visit category pursuant to the matrix prescribed in section 30-3.6 of this Subpart.

(g) District means school district and/or board of cooperative educational services, unless otherwise provided in this Subpart.

(h) Effective means an overall rating of Effective received by a teacher or building principal, based on the ratings an educator received in the student performance category and observation/school visit category pursuant to the matrix prescribed in section 30-3.6 of this Subpart.

(i) Evaluator shall mean any individual who conducts an evaluation of a classroom teacher or building principal under this Subpart.

(j) Highly Effective means an overall rating of Highly Effective received by a teacher or building principal, based on the ratings an educator received in the student performance category and observation/school visit category pursuant to the matrix prescribed in section 30-3.6 of this Subpart.

(k) Ineffective means an overall rating of Ineffective received by a teacher or building principal, based on the ratings an educator received in the student performance category and observation/school visit category pursuant to the matrix prescribed in section 30-3.6 of this Subpart.

(l) Lead evaluator shall mean the primary individual responsible for conducting and completing an evaluation of a classroom teacher or building principal under this Subpart. To the extent practicable, the building principal, or his or her designee, shall be the lead evaluator of a classroom teacher in this Subpart. To the extent practicable, the lead evaluator of a principal should be the superintendent or BOCES district superintendent or his/her designee.

(m) Leadership standards shall mean the Educational Leadership Policy Standards: ISLLC 2008 as adopted by the National Policy Board for Educational Administration (Council of Chief State School Officers, Washington DC, One Massachusetts Avenue, NW, Suite 700, Washington, DC 20001-1431; 2008- available at the Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234). The Leadership Standards provide that an education leader promotes the success of every student by:

(1) facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community;

(2) advocating, nurturing and sustaining a school culture and instructional program conducive to student learning and staff professional growth;

(3) ensuring management of the organization, operations and resources for a safe, efficient, and effective learning environment;

(4) collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(5) acting with integrity, fairness, and in an ethical manner; and

(6) understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

(n) Principal shall mean a building principal or an administrator in charge of an instructional program of a board of cooperative educational services.

(o) School building shall mean a school or program identified by its Basic Educational Data System (BEDS) code, as determined by the commissioner.

(p) State approved student growth model means a statistical model that uses prior academic history, poverty, students with disabilities and English language learners, and any additional factors approved by the Commissioner to measure student growth.

(q) State-designed supplemental assessment shall mean a selection of state tests or assessments developed or designed by the Department, or that the Department purchased or acquired from (i) another state; (ii) an institution of higher education; or (iii) a commercial or not-for-profit entity, provided that such entity must be objective and may not have a conflict of interest or appearance of a conflict of interest; and tests or assessments that have been previously designed or acquired by local districts, but only if the Department significantly modifies growth targets or scoring bands for such tests or assessments or otherwise adapts the test or assessment to the Department's requirements. Such assessments may only be used in the optional student performance subcomponent in order to produce a growth score calculated pursuant to a State-provided or approved growth model.

(r) Student growth means the change in student achievement for an individual student between two or more points in time.

(s) Student growth percentile score shall mean the result of a statistical model that calculates each student's change in achievement between two or more points in time on a State assessment or other comparable growth measure and compares each student's performance to that of similarly achieving students.

(t) Student Learning Objective(s) (SLOs) are academic goals for an educator's students that are set at the start of a course, except in rare circumstances as defined by the Commissioner. SLOs represent the most important learning for the year (or semester, where applicable). They must be specific and measurable, based on available prior student learning data, and aligned to the New York State learning standards, as well as to any other school and district priorities. An educator's scores are based upon the degree to which his or her goals were attained.

(u) Superintendent of schools shall mean the chief school officer of a district or the district superintendent of a board of cooperative educational services, provided that in the case of the City School District of the City of New York, superintendent shall mean the Chancellor of the City School District of the City of New York or his or her designee.

(v) Teacher or principal state provided growth scores shall mean a measure of central tendency of the student growth percentile scores through the use of standard deviations and confidence ranges to identify with statistical certainty educators whose students' growth is well above or well below average compared to similar students for a teacher's or principal's students after the following student characteristics are taken into consideration: poverty, students with disabilities and English language learners. Additional factors may be added by the Commissioner, subject to approval by the Board of Regents.

(w) Teacher(s) of record shall be defined in a manner prescribed by the commissioner.

(x) Teaching Standards are enumerated below:

(1) the teacher acquires knowledge of each student, and demonstrates knowledge of student development and learning to promote achievement for all students;

(2) the teacher knows the content they are responsible for teaching, and plans instruction that ensures growth and achievement for all students;

(3) the teacher implements instruction that engages and challenges all students to meet or exceed the learning standards;

(4) the teacher works with all students to create a dynamic learning environment that supports achievement and growth;

(5) the teacher uses multiple measures to assess and document student growth, evaluate instructional effectiveness, and modify instruction;

(6) the teacher demonstrates professional responsibility and engages relevant stakeholders to maximize student growth, development, and learning; and

(7) the teacher sets informed goals and strives for continuous professional growth.

(y) Testing standards shall mean the ''Standards for Educational and Psychological Testing'' (American Psychological Association, National Council on Measurement in Education, and American Educational Research Association; 2014- available at the Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234).

(z) The governing body of each district shall mean the board of education of each district, provided that, in the case of the City School District of the City of New York, governing body shall mean the Chancellor of the City School District of the City of New York or, to the extent provided by law, the board of education of the City School District of the City of New York and, in the case of BOCES, governing body shall mean the board of cooperative educational services.

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

§ 30-3.3. Requirements for annual professional performance review plans submitted under this Subpart.

(a) Applicability.

(1) The governing body of each district shall adopt a plan, in a form and timeline prescribed by the commissioner, for the annual professional performance review of all of the district's classroom teachers and building principals in accordance with the requirements of Education Law section 3012-d and this Subpart and shall submit such plan to the commissioner for approval. The commissioner shall approve or reject the plan. The commissioner may reject a plan that does not rigorously adhere to the provisions of Education Law section 3012-d and the requirements of this Subpart. Absent a finding by the Commissioner of extraordinary circumstances, if any material changes are made to the plan, the district must submit the material changes by March 1 of each school year, on a form prescribed by the commissioner, to the commissioner for approval. The provisions of Education Law § 3012-c(2)(k) shall only apply to the extent provided in this paragraph.

(2) Such plan shall be filed in the district office, as applicable, and made available to the public on the district's web-site no later than September 10th of each school year, or within 10 days after the plan's approval by the commissioner, whichever shall later occur.

(3) Any plan submitted to the commissioner shall include a signed certification on a form prescribed by the commissioner, by the superintendent, district superintendent or chancellor, attesting that:

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

(ii) the amount of time devoted to test preparation under standardized testing conditions for each grade does not exceed, in the aggregate, two percent of the minimum required annual instructional hours for such grade. Time devoted to teacher administered classroom quizzes or exams, portfolio reviews, or performance assessments shall not be counted towards the limits established by this subdivision. In addition, formative and diagnostic assessments shall not be counted towards the limits established by this subdivision and nothing in this subdivision shall be construed to supersede the requirements of a section 504 plan of a qualified student with a disability or Federal law relating to English language learners or the individualized education program of a student with a disability.

(b) Content of the plan. The annual professional performance review plan shall:

(1) describe the district's process for ensuring that the department receives accurate teacher and student data, including enrollment and attendance data and any other student, teacher, school, course and teacher/student linkage data necessary to comply with this Subpart, in a format and timeline prescribed by the commissioner. This process shall also provide an opportunity for every classroom teacher and building principal to verify the subjects and/or student rosters assigned to them;

(2) describe how the district will report to the Department the individual scores and ratings for each subcomponent and category and overall rating for each classroom teacher and building principal in the district, in a format and timeline prescribed by the commissioner;

(3) describe the assessment development, security, and scoring processes utilized by the district. Such processes shall ensure that any assessments and/or measures used to evaluate teachers and principals under this section are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score;

(4) describe the details of the district's evaluation system, which shall include, but not be limited to, whether the district chose to use each of the optional subcomponents in the student performance and observation/school visit categories and the assessments and/or measures, if any, that are used in each subcomponent of the student performance category and the observation/school visit category and the name of the approved teacher and/or principal practice rubrics that the district uses or evidence that a variance has been granted by the Commissioner from this requirement;

(5) describe how the district will provide timely and constructive feedback to classroom teachers and building principals on their annual professional performance review;

(6) describe the appeal procedures that the district is using pursuant to section 30-3.12 of this section; and

(7) include any certifications required under this Subpart.

(c) The entire annual professional performance review shall be completed and provided to the teacher or the principal as soon as practicable but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured. The teacher's and principal's score and rating on the observation/school visit category and in the student performance category, if available, shall be computed and provided to the teacher or principal, in writing, by no later than the last day of the school year for which the teacher or principal is being measured, but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured. Nothing in this subdivision shall be construed to authorize a teacher or principal to commence the appeal process prior to receipt of his or her overall rating. Districts shall ensure that there is a complete evaluation for all classroom teachers and building principals, which shall include scores and ratings on the subcomponent(s) of the student performance category and the observation/school visit category and the combined category scores and ratings, determined in accordance with the applicable provisions of Education Law § 3012-d and this Subpart, for the school year for which the teacher's or principal's performance is measured.

§ 30-3.4 Standards and criteria for conducting annual professional performance reviews of classroom teachers under Education Law § 3012-d.

(a) Annual professional performance reviews conducted under this section shall differentiate teacher effectiveness resulting in a teacher being rated Highly Effective, Effective, Developing or Ineffective based on multiple measures in two categories: the student performance category and the teacher observation category.

(b) Student performance category. The student performance category shall have one mandatory subcomponent and one optional subcomponent as follows:

(1) Mandatory first subcomponent.

(i) for a teacher whose course ends in a State-created or administered test for which there is a State-provided growth model and at least 50% of a teacher's students are covered under the State-provided growth measure, such teacher shall have a State-provided growth score based on such model; and

(ii) for a teacher whose course does not end in a State-created or administered test or where less than 50% of the teacher's students are covered by a State-provided growth measure, such teacher shall have a Student Learning Objective (SLO) developed and approved by his/her superintendent or his or her designee, using a form prescribed by the com-

missioner, consistent with the SLO process determined or developed by the commissioner, that results in a student growth score; provided that, for any teacher whose course ends in a State-created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. The SLO process determined by the Commissioner shall include a minimum growth target of one year of expected growth, as determined by the superintendent or his or her designee. Such targets, as determined by the superintendent or his or her designee, may take the following characteristics into account: poverty, students with disabilities, English language learners status and prior academic history. SLOs shall include the following SLO elements, as defined by the commissioner in guidance:

(a) student population;
(b) learning content;
(c)interval of instructional time;
(d) evidence;
(e) baseline;
(f) target;
(g) criteria for rating a teacher Highly Effective, Effective, Developing or Ineffective ("HEDI"); and
(h) rationale.

(iii) for a teacher whose course does not end in a State-created or administered test or where a State-provided growth measure is not determined, districts may determine whether to use SLOs based on a list of approved student assessments, or a school-or-BOCES-wide group, team, or linked results based on State/Regents assessments, as defined by the Commissioner in guidance.

(iv) Districts shall develop back-up SLOs for all teachers whose courses end in a State created or administered test for which there is a State-provided growth model, to use in the event that no State-provided growth score can be generated for such teachers.

(2) Optional second subcomponent. A district may locally select a second measure that shall be applied in a consistent manner, to the extent practicable, across the district based on State/Regents assessments or State-designed supplemental assessments and be either:

(i) a second State-provided growth score on a state-created or administered test; provided that the State-provided growth measure is different than that used in the required subcomponent of the student performance category, which may include one or more of the following measures:

(a) a teacher-specific growth score computed by the State based on percentage of students who achieve a State-determined level of growth (e .g., percentage of students whose growth is above the median for similar students);

(b) school-wide growth results based on a State-provided school-wide growth score for all students attributable to the school who took the State English language arts or math assessment in grades 4-8; or

(c) school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed; or

(ii) a growth score based on a State-designed supplemental assessment, calculated using a State-provided or approved growth model. Such growth score may include school or BOCES –wide group, team, or linked results where the State-approved growth model is capable of generating such a score.

(3) All State-provided or approved growth model scores must control for poverty, students with disabilities, English language learners status and prior academic history. For SLOs, these characteristics may be taken into account through the use of targets based on one year of "expected growth", as determined by the superintendent or his or her designee.

(4) The district shall measure student growth using the same measure(s) of student growth for all classroom teachers in a course and/or grade level in a district.

(c) Weighting of Subcomponents Within Student Performance Category.

(1) If a district does not locally select to use the optional second student growth subcomponent, then the mandatory subcomponent shall be weighted at 100%.

(2) If the optional second student growth subcomponent is selected, then the mandatory subcomponent shall be weighted at a minimum of 50% and the optional second subcomponent shall be weighted at no more than 50%.

(3) Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate scores for SLOs in accordance with the minimum percentages prescribed in the table below; provided however that for teachers with courses with small "n" sizes as defined by the Commissioner in guidance, districts shall calculate scores for SLOs using a methodology prescribed by the Commissioner in guidance. For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

SLOs	
Percent of Students Meeting Target	*Scoring Range*
0-4%	*0*
5-8%	*1*
9-12%	*2*
13-16%	*3*
17-20%	*4*
21-24%	*5*
25-28%	*6*
29-33%	*7*
34-38%	*8*
39-43%	*9*
44-48%	*10*
49-54%	*11*
55-59%	*12*
60-66%	*13*
67-74%	*14*
75-79%	*15*
80-84%	*16*
85-89%	*17*
90-92%	*18*
93-96%	*19*
97-100%	*20*

(d) Overall Rating on Student Performance Category.

(1) Multiple student performance measures shall be combined using a weighted average pursuant to subdivision (c) of this section to produce an overall student performance category score of 0 to 20. Based on such score, an overall student performance category rating shall be derived from the table below:

	Overall Student Performance Category Score and Rating	
	Minimum	*Maximum*
H	*18*	*20*
E	*15*	*17*
D	*13*	*14*
I	*0*	*12*

(2) Teacher observation category. The observation category for teachers shall be based on at least two observations; one of which must be unannounced.

(i) Two Mandatory subcomponents.

(a) One observation shall be conducted by a principal or other trained administrator; and

(b) a second observation shall be conducted by: either one or more impartial independent trained evaluator(s) selected and trained by the district or in cases where a hardship waiver is granted by the Department pursuant to subclause (1) of this clause, a second observation shall be conducted by one or more evaluators selected and trained by the district, who are different than the evaluator(s) who conducted the evaluation pursuant to clause (a) of this paragraph. An independent trained evaluator may be employed within the district, but may not be assigned to the same school building as the teacher being evaluated.

(1) A rural school district, as defined by the Commissioner in guidance, or a school district with only one registered school pursuant to section 100.18 of the Commissioner's regulations may apply to the Department for a hardship waiver on an annual basis, in a timeframe and

manner prescribed by the Commissioner, if due to the size and limited resources of the school district, it is unable to obtain an independent evaluator within a reasonable proximity without an undue burden to the school district.

(ii) Optional third subcomponent. The observations category may include a third optional subcomponent based on classroom observations conducted by a trained peer teacher rated Effective or Highly Effective on his or her overall rating in the prior school year from the same school or from another school in the district.

(iii) Frequency and Duration of Observations. The frequency and duration of observations shall be determined locally.

(iv) All observations must be conducted using a teacher practice rubric approved by the commissioner pursuant to a Request for Qualification ("RFQ") process, unless the district has an approved variance from the Commissioner.

(a) Variance for existing rubrics. A variance may be granted to a district that seeks to use a rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party, upon a finding by the Commissioner that the rubric meets the criteria described in the Request for Qualification and the district has demonstrated that it has made a significant investment in the rubric and has a history of use that would justify continuing the use of that rubric.

(b) Variance for use of new innovative rubrics. A variance may be granted to a district that seeks to use a newly developed rubric, upon a finding by the Commissioner that the rubric meets the criteria described in the RFQ, has demonstrated how it will ensure inter-rater reliability and the rubric's ability to provide differentiated results over time.

(v) All observations for a teacher for the school year must use the same approved rubric; provided that districts may locally determine whether to use different rubrics for teachers who teach different grades and/or subjects during the school year.

(vi) At least one of the mandatory observations must be unannounced.

(vii) Observations may occur either live or via recorded video, as determined locally.

(viii) Nothing in this Subpart shall be construed to limit the discretion of a board of education, superintendent of schools or a principal or other trained administrator to conduct observations in addition to those required by this section for non-evaluative purposes.

(ix) Observations must be based only on observable rubric subcomponents. The evaluator may select a limited number of observable rubric subcomponents for focus within a particular observation, so long as all observable Teaching Standards/Domains are addressed across the total number of annual observations.

(x) New York State Teaching Standards/Domains that are part of the rubric but not observable during the classroom observation may be observed during any optional pre-observation conference or post-observation review or other natural conversations between the teacher and the evaluator and incorporated into the observation score.

(xi) Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of an otherwise observable rubric subcomponent (e.g., a lesson plan viewed during the course of the observation may constitute evidence of professional planning).

(xii) Each observation shall be evaluated on a 1-4 scale based on a State- approved rubric aligned to the New York State Teaching Standards and an overall score for each observation shall be generated between 1-4. Multiple observations shall be combined using a weighted average pursuant to subparagraph (xiv) of this paragraph, producing an overall observation category score between 1-4. In the event that a teacher earns a score of 1 on all rated components of the practice rubric across all observations, a score of 0 will be assigned.

(xiii) Weighting of Subcomponents Within Teacher Observation Category. The weighting of the subcomponents within the teacher observation category shall be established locally within the following constraints:

(a) observations conducted by a principal or other trained administrator shall be weighted at a minimum of 80%.

(b) observations conducted by independent impartial observer(s), or other evaluators selected by the district if a hardship waiver is granted, shall be weighted at a minimum of 10%.

(c) if a district selects to use the optional third observation subcomponent, then the weighting assigned to the optional observations conducted by peers shall be established locally within the constraints outlined in clause (1) and (2) of this subparagraph.

(xiv) Overall Rating on the Teacher Observation Category. The overall observation score calculated pursuant to paragraphs (xii) and (xiii) shall be converted into an overall rating, using cut scores determined locally for each rating category; provided that such cut scores shall be consistent with the permissible ranges identified below:

	Overall Observation Category Score and Rating	
	Min	*Max*
H	*3.5 to 3.75*	*4.0*
E	*2.5 to 2.75*	*3.49 to 3.74*
D	*1.5 to 1.75*	*2.49 to 2.74*
I	*0*	*1.49 to 1.74*

§ 30-3.5 Standards and criteria for conducting annual professional performance reviews of building principals under Education Law § 3012-d.

(a) Ratings. Annual professional performance reviews conducted under this section shall differentiate principal effectiveness resulting in a principal being rated Highly Effective, Effective, Developing or Ineffective based on multiple measures in the following two categories: the student performance category and the school visit category.

(b) Student performance category. Such category shall have at least one mandatory first subcomponent and an optional second subcomponent as follows:

(1) Mandatory first subcomponent.

(i) for a principal with at least 30% of his/her students covered under the State-provided growth measure, such principal shall have a State-provided growth score based on such model; and

(ii) for a principal where less than 30% of his/her students are covered under the State-provided growth measure, such principal shall have a Student Learning Objective (SLO), on a form prescribed by the commissioner, consistent with the SLO process determined or developed by the commissioner, that results in a student growth score; provided that, for any principal whose building or program includes courses that end in a State-created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. The SLO process determined by the Commissioner shall include a minimum growth target of one year of expected growth, as determined by the superintendent or his or her designee. Such targets, as determined by the superintendent or his or her designee in the exercise of their pedagogical judgment, may take the following characteristics into account: poverty, students with disabilities, English language learners status and prior academic history. SLOs shall include the following elements, as defined by the Commissioner in guidance:

(a) student population;
(b) learning content;
(c) interval of instructional time;
(d) evidence;
(e) baseline;
(f) target;
(g) criteria for rating a principal Highly Effective, Effective, Developing or Ineffective ("HEDI"); and
(h) Rationale.

(iii) for a principal of a building or program whose courses do not end in a State-created or administered test or where a State-provided growth score is not determined, districts shall use SLOs based on a list of State approved student assessments.

(2) Optional second subcomponent. A district may locally select one or more other measures for the student performance category that shall be applied in a consistent manner, to the extent practicable, across the district based on either:

(i) a second State-provided growth score on a State-created or administered test; provided that a different measure is used than that for the required subcomponent in the student performance category, which may include one or more of the following measures:

(a) principal-specific growth computed by the State based on percentage of students who achieve a State-determined level of growth (e .g. percentage of students whose growth is above the median for similar students);

(b) school-wide growth results using available State-provided growth scores that are locally-computed; or

(ii) a growth score based on a State-designed supplemental assessment, calculated using a State-provided or approved growth model. Such growth score may include school or BOCES –wide group, team, or linked measures where the state-approved growth model is capable of generating such a score.

(3) All State-provided or approved growth scores must control for poverty, students with disabilities, English language learners status and prior academic history. For SLOs, these characteristics may be taken into account through the use of targets based on one year of "expected growth", as determined by the superintendent or his or her designee.

(4) The district shall measure student growth using the same measure(s) of student growth for all building principals within the same building configuration or program.

(c) Weighting of Subcomponents Within Student Performance Category.

(1) If a district does not locally select to use the optional second student growth subcomponent, then the mandatory subcomponent shall be weighted at 100%.

(2) If the optional second student growth subcomponent is selected, then the mandatory subcomponent shall be weighted at a minimum of 50% and the optional second subcomponent shall be weighted at no more than 50%.

(3) Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate growth scores for SLOs in accordance with the minimum percentages prescribed in the table below; provided however that for principals of a building or program with small "n" sizes as defined by the Commissioner in guidance, districts shall calculate scores for SLOs using a methodology prescribed by the Commissioner in guidance. For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

SLOs	
Percent of Students Meeting Target	*Scoring Range*
0-4%	*0*
5-8%	*1*
9-12%	*2*
13-16%	*3*
17-20%	*4*
21-24%	*5*
25-28%	*6*
29-33%	*7*
34-38%	*8*
39-43%	*9*
44-48%	*10*
49-54%	*11*
55-59%	*12*
60-66%	*13*
67-74%	*14*
75-79%	*15*
80-84%	*16*
85-89%	*17*
90-92%	*18*
93-96%	*19*
97-100%	*20*

(4) Overall Rating on Student Performance Category. Multiple measures shall be combined using a weighted average, to produce an overall student performance category score of 0 to 20. Based on such score, an overall student performance category rating shall be derived from the table below:

	Overall Student Performance Category Score and Rating	
	Minimum	*Maximum*
H	*18*	*20*
E	*15*	*17*
D	*13*	*14*
I	*0*	*12*

(d) Principal school visits category. The school visits category for principals shall be based on a State-approved rubric and shall include up to three subcomponents; two of which are mandatory and one of which is optional.

(1) Two Mandatory subcomponents. A district shall evaluate a principal based on at least:

(i) one school visit shall be based on a State-approved principal practice rubric conducted by the building principal's supervisor or other trained administrator; and

(ii) a second school visit shall be conducted by: either one or more impartial independent trained evaluator(s) selected and trained by the district or in cases where a hardship waiver is granted by the Department pursuant to clause (a) of this subparagraph, a second school visit shall be conducted by one or more evaluators selected and trained by the district, who are different than the evaluator(s) who conducted the evaluation pursuant to subparagraph (i) of this paragraph. An independent trained evaluator may be employed within the district, but may not be assigned to the same school building as the principal being evaluated.

(a) A rural school district, as defined by the Commissioner in guidance, or a school district with only one registered school pursuant to section 100.18 of the Commissioner's regulations may apply to the Department for a hardship waiver on an annual basis, in a timeframe and manner prescribed by the Commissioner, if due to the size and limited resources of the school district, it is unable to obtain an independent evaluator within a reasonable proximity without an undue burden to the school district.

(2) Optional third subcomponent. The school visit category may also include a third optional subcomponent based on school visits conducted by a trained peer administrator rated Effective or Highly Effective on his or her overall rating in the prior school year from the same or another school in the district.

(3) Frequency and Duration of School Visits. The frequency of school visits shall be established locally.

(4) All school visits must be conducted using a principal practice rubric approved by the Commissioner pursuant to an RFQ process, unless the district has a currently approved variance from the Commissioner.

(i) Variance for existing rubric. A variance may be granted to a district that seeks to use a rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party, upon a finding by the Commissioner that the rubric meets the criteria described in the RFQ, and the district has demonstrated that it has made a significant investment in the rubric and has a history of use that would justify continuing the use of that rubric.

(ii) Variance for use of new innovative rubrics. A variance may be granted to a district that seeks to use a newly developed rubric, upon a finding by the Commissioner that the rubric meets the criteria described in the RFQ and the district has demonstrated how it will ensure inter-rater reliability and the rubric's ability to provide differentiated results over time.

(5) All school visits for a principal for the year must use the same approved rubric; provided that districts may locally determine whether to use different rubrics for a principal assigned to different grade level configurations or building types.

(6) At least one of the mandatory school visits must be unannounced.

(7) School visits may not be conducted via video.

(8) Nothing in this Subpart shall be construed to limit the discretion of a board of education, superintendent of schools, or other trained administrator from conducting school visits of a principal in addition to those required under this section for non-evaluative purposes.

(9) School visits may be based only on observable rubric subcomponents.

(10) The evaluator may select a limited number of observable rubric subcomponents for focus on within a particular school visit, so long as all observable ISLLC Standards are addressed across the total number of annual school visits.

(11) Leadership Standards and their related functions that are part of the rubric but not observable during the course of the school visit may be observed through other natural conversations between the principal and the evaluator and incorporated into the observation score.

(12) Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of a rubric subcomponent observed during a school visit. Points shall not be allocated based on professional goal-setting; however, organizational goal-setting may be used to the extent it is evidence from the school visit and related to a component of the principal practice rubric.

(13) Each school visit shall be evaluated on a 1-4 scale based on a state approved rubric aligned to the ISLLC standards and an overall score for each school visit shall be generated between 1-4. Multiple observations shall be combined using a weighted average, producing an overall observation category score between 1-4. In the event that a principal earns a score of 1 on all rated components of the practice rubric across all observations, a score of 0 will be assigned. Weighting of Subcomponents

Within Principal School Visit Category. The weighting of the subcomponents within the principal school visit category shall be established locally within the following constraints:

(i) school visits conducted by a superintendent or other trained administrator shall be weighted at a minimum of 80%.

(ii) school visits conducted by independent impartial trained evaluators or other evaluators selected by the district if a hardship waiver is granted, shall be weighted at a minimum of 10%.

(iii) if a district selects to use the optional third school visit subcomponent, then the weighting assigned to the optional school visits conducted by peers shall be established locally within the constraints outlined in clause (i) and (ii) of this subparagraph.

(14) Overall Rating on the Principal School Visits Category. The overall principal school visit score shall be converted into an overall rating, using cut scores determined locally for each rating category; provided that such cut scores shall be consistent with the permissible ranges identified below:

(15) The overall principal/school visit score shall be converted into an overall rating, using cut scores determined locally for each rating category; provided that such cut scores shall be consistent with the permissible ranges identified below:

	Overall Observation Category Score and Rating	
	Min	*Max*
H	*3.5 to 3.75*	*4.0*
E	*2.5 to 2.75*	*3.49 to 3.74*
D	*1.5 to 1.75*	*2.49 to 2.74*
I	*0*	*1.49 to 1.74*

§ 30-3.6. Rating determination.

(a) The overall rating determination for a teacher or principal shall be determined according to a methodology as follows:

		Observation/School Visit			
		Highly Effective (H)	*Effective (E)*	*Developing (D)*	*Ineffective (I)*
Student Performance	*Highly Effective (H)*	*H*	*H*	*E*	*D*
	Effective (E)	*H*	*E*	*E*	*D*
	Developing (D)	*E*	*E*	*D*	*I*
	Ineffective (I)	*D*	*D*	*I*	*I*

(b) Notwithstanding subdivision (a) of this section, a teacher or principal who is rated using both subcomponents in the student performance category and receives a rating of Ineffective in such category shall be rated Ineffective overall; provided, however, that if the measure used in the second subcomponent is a State-provided growth score on a state-created or administered test, a teacher or principal who receives a rating of Ineffective in the student performance category shall not be eligible to receive a rating of Effective or Highly Effective overall;

(c) The district shall ensure that the process by which weights and scoring ranges are assigned to subcomponents and categories is transparent and available to those being rated before the beginning of each school year. Such process must ensure that it is possible for a teacher or principal to obtain any number of points in the applicable scoring ranges, including zero, in each subcomponent. In the event that a teacher/principal earns a score of 1 on all rated components of the practice rubric across all observations, a score of 0 will be assigned. The superintendent, district superintendent or chancellor and the representative of the collective bargaining unit (where one exists) shall certify in the district's plan that the evaluation process shall use the weights and scoring ranges provided by the commissioner.

§ 30-3.7. Prohibited elements. Pursuant to Education Law § 3012-d(7), the following elements shall no longer be eligible to be used in any evaluation subcomponent pursuant to this Subpart:

(a) evidence of student development and performance derived from lesson plans, other artifacts of teacher practice, and student portfolios, except for student portfolios measured by a State-approved rubric where permitted by the department;

(b) use of an instrument for parent or student feedback;

(c) use of professional goal-setting as evidence of teacher or principal effectiveness;

(d) any district or regionally-developed assessment that has not been approved by the department; and

(e) any growth or achievement target that does not meet the minimum standards as set forth in regulations of the commissioner adopted hereunder.

§ 30-3.8. Approval process for student assessments.

(a) Approval of student assessments for the evaluation of classroom teachers and building principals. An assessment provider who seeks to place an assessment on the list of approved student assessments under this section shall submit to the Commissioner a written application in a form and within the time prescribed by the Commissioner.

(b) The commissioner shall evaluate a student assessment(s) for inclusion on the Department's list(s) of approved student assessments for use in the required and/or optional subcomponents of the student performance category, based on the criteria outlined in the RFQ or request for proposals (''RFP'').

(c) Termination of approval. Approval shall be withdrawn for good cause, including, but not limited to, a determination by the commissioner that:

(1) the assessment does not comply with one or more of the criteria for approval set forth in Subpart or in the RFQ or RFP;

(2) the Department determines that the assessment is not identifying meaningful and/or observable differences in performance levels across schools and classrooms; and/or

(3) high quality academic research calls into question the correlation between high performance on the assessment and positive student learning outcomes.

§ 30-3.9. Approval process for approved teacher and principal practice rubrics.

(a) A provider who seeks to place a teacher or principal practice rubric on the list of approved rubrics under this section shall submit to the commissioner a written application in a form and within the time prescribed by the commissioner.

(b) Teacher practice rubric. The commissioner shall evaluate a rubric for inclusion on the department's list of approved practice rubrics for classroom teachers pursuant to a request for qualification (''RFQ'') process. Such proposals shall meet the criteria outlined by the commissioner in the RFQ process.

(c) Principal practice rubric. The commissioner shall evaluate a rubric for inclusion on the department's list of approved practice rubrics for building principals pursuant to a request for qualification (''RFQ'') process. Such proposals shall meet the criteria outlined by the commissioner in the RFQ process.

(d) Termination of approval of a teacher or principal scoring rubric. Approval for inclusion on the department's list of approved rubrics may be withdrawn for good cause, including, but not limited to, a determination by the commissioner that the rubric:

(1) does not comply with one or more of the criteria for approval set forth in this section or the criteria set forth in the request for qualification;

(2) the department determines that the practice rubric is not identifying meaningful and/or observable differences in performance levels across schools and classrooms; and/or

(3) high-quality academic research calls into question the correlation between high performance on this rubric and positive student learning outcomes.

(e) The Department's lists of approved rubrics established pursuant to section 30-2.7 of the Part shall continue in effect until superseded by a list generated from a new RFQ issued pursuant to this section or the list is abolished by the commissioner as unnecessary.

§ 30-3.10. Training of evaluators and lead evaluators.

(a) The governing body of each district shall ensure that evaluators, including impartial and independent observers and peer observers, have appropriate training before conducting a teacher or principal's evaluation under this section. The governing body shall also ensure that any lead evaluator has been certified by such governing body as a qualified lead evaluator before conducting and/or completing a teacher's or principal's evaluation in accordance with the requirements of this Subpart, except as otherwise provided in this subdivision. Nothing herein shall be construed to prohibit a lead evaluator who is properly certified by the Department as a school administrator or superintendent of schools from conducting classroom observations or school visits as part of an annual professional performance review under this Subpart prior to completion of the training required by this section provided such training is successfully completed prior to completion of the evaluation.

(b) To qualify for certification as a lead evaluator, individuals shall successfully complete a training course that meets the minimum requirements prescribed in this subdivision. The training course shall provide training on:

(1) the New York State Teaching Standards and their related elements and performance indicators and the Leadership standards and their related functions, as applicable;

(2) evidence-based observation techniques that are grounded in research;

(3) application and use of the student growth percentile model and any other growth model approved by the Department as defined in section 30-3.2 of this Subpart;

(4) application and use of the State-approved teacher or principal rubric(s) selected by the district for use in evaluations, including training on the effective application of such rubrics to observe a teacher or principal's practice;

(5) application and use of any assessment tools that the district utilizes to evaluate its classroom teachers or building principals;

(6) application and use of any locally selected measures of student growth used in the optional subcomponent of the student performance category used by the district to evaluate its teachers or principals;

(7) use of the statewide instructional reporting system;

(8) the scoring methodology utilized by the department and/or the district to evaluate a teacher or principal under this Subpart, including the weightings of each subcomponent within a category; how overall scores/ratings are generated for each subcomponent and category and application and use of the evaluation matrix(es) prescribed by the commissioner for the four designated rating categories used for the teacher's or principal's overall rating and their category ratings; and

(9) specific considerations in evaluating teachers and principals of English language learners and students with disabilities.

(c) Independent evaluators and peer evaluators shall receive training on the following elements:

(1) the New York State Teaching Standards and their related elements and performance indicators and the Leadership standards and their related functions, as applicable;

(2) evidence-based observation techniques that are grounded in research; and

(3) application and use of the State-approved teacher or principal rubric(s) selected by the district for use in evaluations, including training on the effective application of such rubrics to observe a teacher or principal's practice;

(d) Training shall be designed to certify lead evaluators. Districts shall describe in their annual professional performance review plan the duration and nature of the training they provide to evaluators and lead evaluators and their process for certifying lead evaluators under this section.

(e) Districts shall also describe in their annual professional performance review plan their process for ensuring that all evaluators maintain inter-rater reliability over time (such as data analysis to detect disparities on the part of one or more evaluators; periodic comparisons of a lead evaluator's assessment with another evaluator's assessment of the same classroom teacher or building principal; annual calibration sessions across evaluators) and their process for periodically recertifying all evaluators.

(f) Any individual who fails to receive required training or achieve certification or re-certification, as applicable, by a district pursuant to the requirements of this section shall not conduct or complete an evaluation under this Subpart.

§ 30-3.11. Teacher or principal improvement plans.

(a) Upon rating a teacher or a principal as Developing or Ineffective through an annual professional performance review conducted pursuant to Education Law section 3012-d and this Subpart, a district shall formulate and commence implementation of a teacher or principal improvement plan for such teacher or principal by October 1 in the school year following the school year for which such teacher's or principal's performance is being measured or as soon as practicable thereafter.

(b) Such improvement plan shall be developed by the superintendent or his or her designee in the exercise of their pedagogical judgment and shall include, but need not be limited to, identification of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed, and, where appropriate, differentiated activities to support a teacher's or principal's improvement in those areas.

§ 30-3.12. Appeal procedures.

(a) An annual professional performance review plan under this Subpart shall describe the appeals procedure utilized by a district through which an evaluated teacher or principal may challenge their annual professional performance review. Pursuant to Education Law § 3012-d, a teacher or principal may only challenge the following in an appeal:

(1) the substance of the annual professional performance review; which shall include the following:

(i) in the instance of a teacher or principal rated Ineffective on the student performance category but rated Highly Effective on the observation/school visit category based on an anomaly, as determined locally.

(2) the district's adherence to the standards and methodologies required for such reviews, pursuant to Education Law § 3012-d and this Subpart;

(3) the adherence to the regulations of the commissioner and compliance with any applicable locally negotiated procedures, as required under Education Law § 3012-d and this Subpart; and

(4) district's issuance and/or implementation of the terms of the teacher or principal improvement plan under Education Law § 3012-d and this Subpart.

(b) Appeal procedures shall provide for the timely and expeditious resolution of any appeal.

(c) An evaluation that is the subject of an appeal shall not be sought to be offered in evidence or placed in evidence in any proceeding conducted pursuant to Education Law §§ 3020-a and 3020-b or any locally negotiated alternate disciplinary procedure until the appeal process is concluded.

(d) Nothing in this section shall be construed to alter or diminish the authority of the governing body of a district to grant or deny tenure to or terminate probationary teachers or probationary building principals during the pendency of an appeal pursuant to this section for statutorily and constitutionally permissible reasons, including the teacher's or principal's performance that is the subject of the appeal.

(e) Nothing in this Subpart shall be construed to authorize a teacher or principal to commence the appeal process prior to receipt of his or her rating from the district.

§ 30-3.13. Monitoring and consequences for non-compliance.

(a) The department will annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts and/or schools where evidence suggests that a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. The department will analyze data submitted pursuant to this Subpart to identify:

(1) schools or districts with unacceptably low correlation results between student growth on the student performance category and the teacher observation/principal school visit category used by the district to evaluate its teachers and principals; and/or

(2) schools or districts whose teacher and principal overall ratings and subcomponent scores and/or ratings show little differentiation across educators and/or the lack of differentiation is not justified by equivalently consistent student achievement results; and/or schools or districts that show a pattern of anomalous results in the student performance and observation/school visits categories.

(b) A district identified by the department in one of the categories enumerated above may be highlighted in public reports and/or the commissioner may order a corrective action plan, which may include, but not be limited to, a timeframe for the district to address any deficiencies or the plan will be rejected by the Commissioner, changes to the district's target setting process, a requirement that the district arrange for additional professional development, that the district provide additional in-service training and/or utilize independent trained evaluators to review the efficacy of the evaluation system.

(c) Corrective action plans may require changes to a collective bargaining agreement.

§ 30-3.14. Prohibition against Student Being Instructed by Two Consecutive Ineffective Teachers.

(a) A student may not be instructed, for two consecutive school years, in the same subject by any two teachers in the same district, each of whom received a rating of Ineffective under an evaluation conducted pursuant to this section in the school year immediately prior to the school year in which the student is placed in the teacher's classroom; provided, that if a district deems it impracticable to comply with this subdivision, the district shall seek a teacher-specific waiver from the department from such requirement, on a form and timeframe prescribed the commissioner.

(b) If a district assigns a student to a teacher rated Ineffective in the same subject for two consecutive years, the district must seek a waiver from this requirement for the specific teacher in question. The commissioner may grant a waiver from this requirement if:

(1) the district cannot make alternative arrangements and/or reassign a teacher to another grade/subject because a hardship exists (for example, too few teachers with higher ratings are qualified to teach such subject in that district); and

(2) the district has an improvement and/or removal plan in place for the teacher at issue that meets certain guidelines prescribed by the commissioner.

§ 30-3.15. Applicability of the provisions in Education Law § 3012-c. The provisions of Education Law § 3012-c shall apply to annual professional performance reviews pursuant to this Subpart as follows:

(a) the provisions of paragraphs (d) and (k) of subdivision (2), subdivision (4), subdivision (5) and subdivision (9) of Education Law § 3012-c that apply are set forth in the applicable language of this Subpart;

(b) the provisions of paragraphs (k-1), (k-2) and (l) of subdivision (2) of Education Law § 3012-c shall apply without any modification;

(c) the provisions of subdivision (5-a) of Education Law § 3012-c shall apply without modification except:

(1) Any reference in subdivision (5-a) to a proceeding pursuant to Education Law § 3020-a based on a pattern of ineffective teaching shall be deemed to be a reference to a proceeding pursuant to Education Law § 3020-b against a teacher or principal who receives two or more consecutive composite Ineffective ratings; and in accordance with Education Law § 3020(3) and (4)(a), notwithstanding any inconsistent language in subdivision (5-a), any alternate disciplinary procedures contained in a collective bargaining agreement that becomes effective on or after July 1, 2015 shall provide that two consecutive Ineffective ratings pursuant to annual professional performance reviews conducted in accordance with the provisions of Education Law § 3012-c or 3012-d shall constitute prima facie evidence of incompetence that can only be overcome by clear and convincing evidence that the employee is not incompetent in light of all surrounding circumstances, and if not successfully overcome, the finding, absent extraordinary circumstances, shall be just cause for removal, and that three consecutive Ineffective ratings pursuant to annual professional performance reviews conducted in accordance with the provisions of Education Law § 3012-c or 3012-d shall constitute prima facie evidence of incompetence that can only be overcome by clear and convincing evidence that the calculation of one or more of the teacher's or principal's underlying components on the annual professional performance reviews pursuant to Education Law § 3012-c or 3012-d was fraudulent, and if not successfully overcome, the finding, absent extraordinary circumstances, shall be just cause for removal.

(d) the provisions of subdivision (10) of Education Law § 3012-c shall apply without modification, except that there is no composite effectiveness score under Education Law § 3012-d.

§ 30-3.16. Challenges to State-Provided Growth Scores.

(a) A teacher/principal shall have the right to challenge their State-provided growth score under this Subpart; provided that the teacher/principal provides sufficient documentation that he/she meets at least one of the following criteria in their annual evaluation:

(1) a teacher/principal was rated Ineffective on his/her State-provided growth score and Highly Effective on the Observation/School Visit category in the current year and was rated either Effective or Highly Effective on his/her State-provided growth score in the previous year; or

(2) a high school principal of a building that includes at least all of grades 9-12, was rated Ineffective on the State-provided growth score but such percent of students as shall be established by the Commissioner in his/her school/program within four years of first entry into grade 9 received results on department-approved alternative examinations in English Language Arts and/or or mathematics as described in section 100.2(f) of this Title (including, but not limited to, advanced placement examinations, and/or International Baccalaureate examinations, SAT II, etc.) scored at proficiency (i.e., a Level 3 or higher).

(b) A teacher/principal shall submit an appeal to the Department, in a manner prescribed by the Commissioner, within 20 days of receipt of his/her overall annual professional performance review rating or the effective date of this section, whichever is later, and submit a copy of the appeal to the school district and/or BOCES. The school district and/or BOCES shall have ten days from receipt of a copy of such appeal to submit a reply to the Department.

(c) Based on the documentation received, if the Department overturns a teacher's/principal's rating on the State-provided growth score, the district/BOCES shall substitute the teacher's/principal's results on the back-up SLO developed by the district/BOCES for such teacher/principal. If a back-up SLO was not developed, then the teacher's/principal's overall composite score and rating shall be based on the portions of their annual professional performance review not affected by the nullification of the State-provided growth score. Provided, however, that following a successful appeal under paragraph (1) of subdivision (a) of this section, if a back-up SLO is used a teacher/principal shall not receive a score/rating higher than developing on such SLO.

(d) An evaluation that is the subject of an appeal shall not be sought to be offered in evidence or placed in evidence in any proceeding conducted pursuant to Education Law sections 3020-a and 3020-b or any locally negotiated alternate disciplinary procedure until the appeal process is concluded.

(e) Nothing in this section shall be construed to alter or diminish the authority of the governing body of a district to grant or deny tenure to or terminate probationary teachers or probationary building principals during the pendency of an appeal pursuant to this section for statutorily and constitutionally permissible reasons, including the teacher's/principal's performance that is the subject of the appeal.

(f) Nothing in this Subpart shall be construed to authorize a teacher/principal to commence the appeal process prior to receipt of his/her overall rating from the district/BOCES.

(g) During the pendency of an appeal under this section, nothing shall be construed to alter the obligation of a school district/BOCES to develop and implement a teacher improvement plan or principal improvement plan during the pendency of an appeal.

(h) Nothing in this section shall be construed to limit any rights of a teacher/principal under section 30-2.11 of this Subpart.

(i) Notwithstanding any other provision of rule or regulation to the contrary, a high school principal of a building that includes at least all of grades 9-12 who meets either of the criteria in paragraphs (1) or (2) of this subdivision shall not receive a State-provided growth score and shall instead use back-up SLOs:

(1) the principal would be rated Ineffective or Developing on the State-provided growth score but the graduation rate of the students in that school building exceeded 90%, and the proportion of the student population included in either the ELA Regents Median Growth Percentile or the Algebra Regents Median Growth Percentile was less than ten percent of the total enrollment for the school; or the principal

(2) has no Combined Median Growth Percentile rating or score, and the proportion of the student population included in the ELA Regents Median Growth Percentile and Algebra Regents Median Growth Percentile was less than five percent of the total enrollment for the school in one subject, and less than ten percent of the total enrollment in the other subject.

(3) If a back-up SLO was not developed, then the principal's overall composite score and rating shall be based on the remaining portions of their annual professional performance review.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-27-15-00019-P, Issue of July 8, 2015. The emergency rule will expire March 11, 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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

Education Law 3012-d, as added by Section 2 of Subpart E of Part EE of Chapter 56 of the Laws of 2015 establishes a new evaluation system for classroom teachers and building principals employed by school districts and BOCES for the 2015-16 school year and thereafter.

Section 1 of Subpart E of Part EE of Chapter 56 of the Laws of 2015 requires the Commissioner of Education to adopt regulations of the Commissioner no later than June 30, 2015, to implement a statewide annual teacher and principal evaluation system in New York state pursuant to Education Law § 3012-d, after consulting with experts and practitioners in the fields of education, economics and psychometrics and with the Secretary of the United States Department of Education on weights, measures and ranking of evaluation categories and subcomponents. Section 3 of Subpart C of Chapter 20 of the Laws of 2015 amends Education Law § 3012-d to require the State-provided growth score to be based on such model, which shall take into consideration certain student characteristics, as determined by the commissioner, including but not limited to students with disabilities, poverty, English language learner status and prior academic history and which shall identify educators whose students' growth is well above or well below average compared to similar students for a teacher's or principal's students after the certain student characteristics above are taken into account.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above authority vested in the

Regents and Commissioner to carry into effect State educational laws and policies and Ch.56, L.2015, as amended by Ch.20, L.2015, and is necessary to support the commitment made by the Legislature, the Governor, the Regents and Commissioner to ensure effective evaluation of classroom teachers and building principals.

3. NEEDS AND BENEFITS:

On April 13, 2015, the Governor signed Chapter 56 of the Laws of 2015 to add a new Education Law § 3012-d, to establish a new evaluation system for classroom teachers and building principals.

The new law requires the Commissioner to adopt regulations necessary to implement the evaluation system by June 30, 2015, after consulting with experts and practitioners in the fields of education, economics and psychometrics. It also required the Department to establish a process to accept public comments and recommendations regarding the adoption of regulations pursuant to the new law and consult in writing with the Secretary of the United States Department of Education on weights, measures and ranking of evaluation categories and subcomponents. It further required the release of the response from the Secretary upon receipt thereof, but in any event, prior to the publication of the regulations.

By letter dated April 28, 2015, the Department sought guidance from the Secretary of the United States Department of Education on the weights, measures and ranking of evaluation, as required under the new law and the Secretary responded.

In accordance with the requirements of the statute, the Department created an email box to accept comments on the new evaluation system (eval2015@nysed.gov). The Department has received and reviewed over 4,000 responses and has taken these comments into consideration in formulating the proposed amendments. In addition, the Board of Regents convened on May 7, 2015 to hold a Learning Summit, wherein the Board of Regents hosted a series of panels to provide recommendations to the Board on the new evaluation system. Such panels included experts in education, economics, and psychometrics and State-wide stakeholder groups including but not limited to NYSUT, UFT, School Boards, NYSCOSS and principal and parent organizations. A video recording and the submitted materials for the Learning Summit are available on the Department's website at www.nysed.gov/learning-summit. The national experts and the representatives of stakeholder groups who presented at the Learning Summit are listed at www.nysed.gov/content/learning-summit-presenter-biographies. The materials submitted by the national experts and stakeholder groups are listed at www.nysed.gov/content/learning-summit-submitted-materials.

The proposed amendment reflects areas of consensus among the groups, and in areas where there were varying recommendations, the Department attempted to reconcile those differences to reflect best practices while also taking into consideration recommendations in the Testing Reduction Report regarding the reduction of unnecessary testing. The Department distilled the various recommendations received at the Learning Summit into a powerpoint presentation presented to the Board of Regents at their May 20, 2015 meeting, which is posted at www.regents.nysed.gov/common/regents/files/meetings/May%202015/APPR.pdf.

Based on the statutory language in Education Law § 3012-d and Subpart C of the Chapter 20 of the Laws of 2015, the State-provided growth model used under Education Law § 3012-c has been continued under the new regulations promulgated under Education Law § 3012-d. The growth model used under Education Law § 3012-c was based on recommendations from the Regents Task Force on Teacher and Leader Effectiveness, which can be found at www.regents.nysed.gov/common/regents/files/documents/meetings/2011Meetings/April2011/RegentsTaskforceonTeacherand PrincipalEffectiveness.pdf and the recommendations of the Metrics Workgroup of the Task Force and a Technical Advisory Committee, comprised of psychometric experts in the field. Additional research supporting evaluations, including the use of a growth model, can be found on our website at www.engageny.org/resource/research-supporting-all-components-of-teacherprincipal-evaluation. A variety of other research materials/analyses regarding the growth model can be found on the Department's website at www.engageny.org/resource/resources-about-state-growth-measures.

Proposed amendment

The proposed rule conforms the regulations to the provisions of the 2015 legislation by making the following major changes to Subpart 30-2 of the Rules of the Board of Regents.

The title of section 30-2 and section 30-2.1 are amended to clarify that Subpart 30-2 only applies to APPRs conducted prior to the 2015-2016 school year or APPRs conducted pursuant to a CBA entered into on or before April 1, 2015 that remains in effect on or after April 1, 2015 until a subsequent agreement is reached.

Section 30-2.1(d) is amended to clarify that a school district or BOCES has an unfettered statutory right to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reason, including but not limited to misconduct, and until a tenure decision is made, the performance of a teacher or principal in the classroom or school. Section 30-2.11 also clarifies that a school district or BOCES may terminate a probationary teacher or principal during an appeal for any statutorily and constitutionally permissible reason, including a teacher's or principal's performance.

A new Subpart 30-3 is added to implement the new evaluation system.

Section 30-3.1 clarifies that the new evaluation system only applies to CBA's entered into after April 1, 2015 unless the agreement relates to the 2014-2015 school year only. The section further clarifies that nothing in the new Subpart shall be construed to abrogate any conflicting provisions of any CBA in effect on effect on or after April 1, 2015 during the term of such agreement and until entry into a successor CBA agreement. The section further clarifies that APPRs shall be a significant factor for employment decisions and teacher and principal development, consistent with the prior law. The section also clarifies the unfettered right to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reason. This section also provides that the Board will convene workgroup(s) comprised of stakeholders and experts in the field to provide recommendations to the Board on assessments and evaluations that could be used for APPRs in the future.

Section 30-3.2 defines several terms used in the Subpart.

Section 30-3.3 prescribes the requirements for APPR plans submitted under the new Subpart.

New Teacher Evaluation Requirements

Section 30-3.4 describes the standards and criteria for conducting APPRs of classroom teachers under the new law. The new law requires teachers to be evaluated based on two categories: the student performance category and the teacher observation category.

Student performance category

The first category has two subcomponents, one mandatory and the other optional. For the first mandatory component, teachers shall be evaluated as follows:

- For teachers whose courses end in a State created or administered test for which there is a State-provided growth model and at least 50% of a teacher's students are covered under the State-provided growth measure, such teachers shall have a State-provided growth score based on such model.
- For a teachers whose course does not end in a State created or administered test or where less than 50% of the teacher's students are covered under the State-provided growth measure, such teachers shall have a Student Learning Objective ("SLO") consistent with a goal setting process determined or developed by the Commissioner that results in a student growth score; provided that for any teacher whose course ends in a State created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO.

The second optional subcomponent shall be comprised of the one or more the following options, as determined locally:

A second State-provided growth score on a State-created or administered test; provided that the State provided growth measure is different than that used in the required subcomponent of the student performance category, which may include one or more of the following measures:

o a teacher-specific growth score computed by the State based on percentage of students who achieve a State-determined level of growth (e .g., percentage of students whose growth is above the median for similar students);

o school-wide growth results based on a State-provided school-wide growth score for all students attributable to the school who took the State English language arts or math assessment in grades 4-8; or

o school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed;

- A growth score based on a state designed supplemental assessment calculated using a State provided or approved growth model.

The law requires the Commissioner to establish weightings and scoring ranges for the subcomponents of the student performance category. The proposed amendment applies the following weights to each of the subcomponents:

- If a district does not locally select to use the optional second student growth subcomponent, then the mandatory subcomponent shall be weighted at 100%.
- If the optional second student growth subcomponent is selected, then the mandatory subcomponent shall be weighted at a minimum of 80% and the optional second subcomponent shall be weighted at no more than 20%; provided, however, that if the optional second subcomponent does not include traditional standardized tests, the weightings shall be established locally, provided that the mandatory student growth subcomponent shall be weighted at a minimum of 50% and the optional student growth subcomponent shall be weighted no more than 50%.

Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must

result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate scores for SLOs in accordance with the table provided in the proposed amendment; provided however that for teachers with courses with small "n" sizes as defined by the Commissioner in guidance, districts shall calculate scores for SLOs using a methodology specified by the Commissioner in guidance. For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

Teacher observation category

The second subcomponent shall be comprised of three subcomponents; two mandatory and one optional. The two mandatory subcomponents shall be based on:

• one observation that shall be conducted by a principal or other trained administrator; and

• a second observation that shall be conducted by one or more impartial independent trained evaluator(s) selected and trained by the district. An independent trained evaluator may be employed within the district, but may not be assigned to the same school building as the teacher being evaluated.

One of the mandatory observations must be unannounced. The third optional subcomponent may include:

• classroom observations conducted by a trained peer teacher rated Effective or Highly Effective on his or her overall rating in the prior school year from the same school or from another school in the district.

The law also requires the Commissioner to establish the frequency and duration of observations in regulations. The proposed amendment allows the frequency and duration of observations to be established locally.

This section also requires all observations to be conducted using a teacher practice rubric approved by the commissioner pursuant to a Request for Qualification ("RFQ") process, unless the district has an approved variance from the Commissioner and prescribes parameters for the observations category.

The law further requires the Commissioner to establish weightings and scoring ranges for the subcomponents of the teacher observations category. The proposed amendment provides that the weighting of the subcomponents within the teacher observation category shall be established locally within the following constraints:

• observations conducted by a principal or other trained administrator shall be weighted at a minimum of 80%.

• observations conducted by independent impartial observers shall be weighted at a minimum of 10%.

• if a district selects to use the optional third observation subcomponent, then the weighting assigned to the optional observations conducted by peers shall be established locally within the constraints outlined above.

The overall observation score shall be converted into an overall rating pursuant to the ranges identified in the proposed amendment.

New Principal Evaluation Requirements

Section 30-3.5 describes the standards and criteria for conducting APPRs of building principals under the new law. The new law requires the Commissioner to establish a principal evaluation system that is aligned to the new teacher evaluation system set forth in Education Law § 3012-d.

To implement the new law, the proposed amendment requires building principals to be evaluated based on two categories: the student performance category and the school visit category.

The first category has two subcomponents, one mandatory and the other optional. For the first mandatory component, teachers shall be evaluated as follows:

For principals with at least 30% of their students covered under a State-provided growth measure, such principal shall have a State-provided growth score based on such model; except for if: (1) the principal would be rated Ineffective or Developing on the State-provided growth score but the graduation rate of the students in that school building exceeded 90%, and the proportion of the student population included in either the ELA Regents Median Growth Percentile or the Algebra Regents Median Growth Percentile was less than ten percent of the total enrollment for the school; or the principal

(2) has no Combined Median Growth Percentile rating or score, and the proportion of the student population included in the ELA Regents Median Growth Percentile and Algebra Regents Median Growth Percentile was less than five percent of the total enrollment for the school in one subject, and less than ten percent of the total enrollment in the other subject.

• For principals where less than 30% of their students are covered under a State-provided growth measure, such principals shall have a SLO consistent with a goal setting process determined or developed by the Commissioner that results in a student growth score; provided that for any teacher whose course ends in a State created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO.

If the district opts to use the second optional subcomponent, it shall be comprised of one or more of the following measures:

• A second State-provided growth score on a State-created or administered test; provided that the State provided growth measure is different than that used in the required subcomponent of the student performance category, which may include one or more of the following measures:

o a principal-specific growth score computed by the State based on percentage of students who achieve a State-determined level of growth (e .g., percentage of students whose growth is above the median for similar students); and/or

o school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed

• A growth score based on a state designed supplemental assessment calculated using a State provided or approved growth model.

The law requires the Commissioner to establish weightings and scoring ranges for the subcomponents of the student performance category. The proposed amendment applies the following weights to each of the subcomponents:

• If a district does not locally select to use the optional second student growth subcomponent, then the mandatory subcomponent shall be weighted at 100%.

• If the optional second student growth subcomponent is selected, then the mandatory subcomponent shall be weighted at a minimum of 80% and the optional second subcomponent shall be weighted at no more than 20%; provided, however, that if the optional second subcomponent does not include traditional standardized tests, the weightings shall be established locally, provided that the mandatory student growth subcomponent shall be weighted at a minimum of 50% and the optional student growth subcomponent shall be weighted no more than 50%.

Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate scores for SLOs in accordance with the table provided in the proposed amendment; provided however that for teachers with courses with small "n" sizes as defined by the Commissioner in guidance, districts shall calculate scores for SLOs using a methodology specified by the Commissioner in guidance. For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

Principal school visit category

The principal school visit category shall be comprised of three subcomponents; two mandatory and one optional. The two mandatory subcomponents shall be based on:

• one observation shall be conducted by the principal's supervisor or other trained administrator; and

• a second observation shall be conducted by one or more impartial independent trained evaluator(s) selected and trained by the district. An independent trained evaluator may be employed within the district, but may not be assigned to the same school building as the principal being evaluated.

One of the mandatory school visits by the principal's supervisor must be unannounced.

The third optional subcomponent may include:

• School visits conducted by a trained peer administrator rated Effective or Highly Effective on his or her overall rating in the prior school year from the same school or from another school in the district.

The law also requires the Commissioner to establish the frequency and duration of school visits in regulations. The proposed amendment requires the frequency and duration of observations to be set locally.

The section also requires all observations to be conducted using a principal practice rubric approved by the commissioner pursuant to a Request for Qualification ("RFQ") process, unless the district has an approved variance from the Commissioner.

This section further prescribes parameters for the school visits category. The law requires the Commissioner to establish weightings and scoring ranges for the subcomponents of the school visits category. The proposed amendment provides that the weighting of the subcomponents within the principal school visits category shall be established locally within the following constraints:

• School visits conducted by the principal's supervisor or other trained administrator shall be weighted at a minimum of 80%.

• School visits conducted by independent impartial trained evaluators shall be weighted at a minimum of 10%.

• If a district selects to use the optional third observation subcomponent, then the weighting assigned to the optional school visits conducted by peers shall be established locally within the constraints outlined above.

The overall school visit category score shall be converted into an overall rating pursuant to the ranges identified in the proposed amendment.

Section 30-3.6 describes how the overall rating is computed, based on the evaluation matrix established by the new law, which combines the teacher's or principal's ratings on the student performance category and the observation/school visit category:

		Observation/School Visit			
		Highly Effective (H)	*Effective (E)*	*Developing (D)*	*Ineffective (I)*
Student Performance	*Highly Effective (H)*	*H*	*H*	*E*	*D*
	Effective (E)	*H*	*E*	*E*	*D*
	Developing (D)	*E*	*E*	*D*	*I*
	Ineffective (I)	*D**	*D**	*I*	*I*

*If a teacher is rated ineffective on the student performance category and a State-designed supplemental assessment was included as an optional subcomponent of the student performance category, the teacher can be rated no higher than ineffective overall pursuant to Education Law §§ 5(a) and 7.

This section also provides that it must be possible to obtain each point in the scoring ranges, including 0, for each subcomponent and category. It further requires that the superintendent, district superintendent or Chancellor and the president of the collective bargaining representative, where one exists, must certify in the APPR plan that the evaluation system will use the weights and scoring ranges provided by the Commissioner and that the process by which weights and scorings are assigned to subcomponents and categories is transparent and available to those being rated before the beginning of each school year.

Section 30-3.7 lists the prohibited elements set forth in Education Law § 3012-d, which precludes districts/BOCES from using the following as part of a teacher's and/or principal's evaluation:

- evidence of student development and performance derived from lesson plans, other artifacts of teacher practice, and student portfolios, except for student portfolios measured by a State-approved rubric where permitted by the department;
- use of an instrument for parent or student feedback;
- use of professional goal-setting as evidence of teacher or principal effectiveness;
- any district or regionally-developed assessment that has not been approved by the department; and
- any growth or achievement target that does not meet the minimum standards as set forth in regulations of the commissioner adopted hereunder.

Sections 30-3.8 and 30-3.9 set forth the approval processes for student assessments and teacher and principal practice rubrics.

Section 30-3.10 sets forth the training requirements for evaluators and lead evaluators; which now requires evaluators and lead evaluations to be trained on certain prescribed elements relating to observations and the applicable teacher/principal practice rubrics pursuant to Education Law § 3012-d(15).

Section 30-3.11 addresses teacher and principal improvement plans, which now allows the superintendent in the exercise of his or her pedagogical judgment to develop and implement the improvement plans pursuant to Education Law § 3012-d(15).

Section 30-3.12 addresses local appeal procedures. Currently, the regulations set forth the grounds for an appeal which includes the ability of a teacher or principal to challenge the substance of their APPR in an appeal. The proposed amendment defines the substance of an APPR to include appeals in circumstances where a teacher or principal is rated Ineffective on the student performance category, but rated Highly Effective on the observation/school visit category based on an anomaly, as determined locally pursuant to Education Law § 3012-d(15).

Section 30-3.13, which addresses monitoring and consequences for non-compliance, which now allows the Department to require changes to a CBA pursuant to Education Law § 3012-d(15).

Section 30-3.14 codifies the statutory requirement that no student be assigned to two teachers in the same subject in two consecutive school years, each of whom received a rating of Ineffective pursuant to an evaluation conducted pursuant to Education Law § 3012-d in the school year immediately prior to the year in which the student is placed in the teacher's classroom. The proposed amendment provides for a teacher-specific waiver from the Department from such requirement where it is impracticable to comply with this requirement.

Section 30-3.15 describes the extent to which provisions of Education Law § 3012-c(2)(d), (k), (k-1), (k-2) and (l), (4), (5), (5-a), (9) and (10) are carried over into the new evaluation system, as required by Education Law § 3012-d(15).

Revisions to the Proposed Amendment following the public comment period

Following the 45-day public comment period required under the State Administrative Procedure Act, the proposed amendment was revised in several places as follows:

First, the Department has decided to reexamine the State growth model, which will take additional time. In the interim, the Department has amended Subpart 30-2 and 30-3 to prescribe an appeals process whereby certain teachers or principals who were rated Ineffective on their State-provided growth score may appeal to the Department based on certain anomalies described in the regulation. The appeals process would apply to growth scores for the 2014-2015 school year and thereafter until the growth model has been re-examined by the Department and appropriate experts in the field.

The Department has also revised the regulation to provide for a hardship waiver from the requirement for an independent observer for rural school districts and for school districts with one registered school building who would be unduly burdened if the district were required to retain an independent evaluator. A school district would need to demonstrate that due to the size and limited resources of the school district it is unable to obtain an independent evaluator within a reasonable proximity to the school district. In lieu of an independent evaluator, the school district would be required to provide a second observation conducted by a trained evaluator who is different than the supervisor or evaluator who conducted the first observation.

Also, in response to concerns relating to a teacher's/principal's privacy, the Department revised the provisions in the June regulations relating to teacher/principal privacy to eliminate the requirement that parents be provided with the scores/ratings on the student performance and observation categories and instead, are requiring that Education Law § 3012-c apply without modification, except that there is no composite effectiveness score under Education Law § 3012-d.

The Department also received several comments on the use of artifacts. Education Law § 3012-d(10)(b) requires implementation of the observation category to be subject to local negotiation. Therefore, while no additional changes were made in response to these comments, the regulations adopted by the Board at its June meeting recognize that parts of the rubric that are not observable during classroom observations may be incorporated into the observation score where they are observed during any optional pre- or post-observation review or other natural conversations between teachers and their evaluators.

The Department also made the following technical amendments to the proposed amendment:

The Department modified section 100.2(o) of the Commissioner's regulation to conform to Education Law § 3012-d.

The Department clarified that a teacher's and principal's score and rating on the observation/school visit category and in the student performance category, if available, shall be computed and provided to the teacher or principal, in writing, by no later than the last day of the school year for which the teacher or principal is being measured, but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured. This will ensure that a teacher's or principal's score on SLOs used for the required subcomponent and their scores on the optional subcomponent, if used, are provided on or before September 1st.

The Department further clarified that nothing in this Subpart shall be construed to limit the discretion of a board of education or superintendent of schools or other trained administrator to conduct observations/school visits of a teacher/principal in addition to those required under this section for non-evaluative purposes.

Consistent with the requirements for the teacher evaluation system, the Department revised the proposed amendment to eliminate references to a supervisor or other trained administrator from the requirement for an unannounced school visit for principals and instead just generally provides that at least one mandatory school visit shall be unannounced in an effort to be aligned to the teacher evaluation system.

4. COSTS:

a. Costs to State government: The rule implements Education Law section 3012-d and does not impose any costs on State government, including the State Education Department, beyond those costs imposed by the statute. The new appeal process for the State-provided growth score will be performed by existing staff and therefore, the Department believes there will be no additional costs to the State government.

b. Costs to local government: Education Law section 3012-d, as added by Chapter 56 of the Laws of 2015, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES) for the 2015-2016 school year and thereafter.

The proposed rule may result in additional costs on school districts and BOCES related to collective bargaining. However, Education Law § 3012-d(10) explicitly requires collective bargaining relating to the decision on whether to use the optional second subcomponent in the student performance category and which measure is to be used in such subcomponent, and collective bargaining relating to how to implement the observation/school visit category in accordance with the Taylor Law. Since collective bargaining is already required by the statute and it is impossible to ascertain in advance what issues might trigger additional bargaining in more than 700 school districts and BOCES in the State, the State Education Department has no basis for determining whether and to what extent provisions of the proposed rule might result in additional costs attributable to collective bargaining beyond those required by statute.

The costs discussed below are based on the following assumptions: (1) an estimated hourly rate for teachers of $53.18 (based on an average annual teacher salary of $76,572.00 divided by 1,440 hours per school year (180 days, 8 hours each day)); (2) an estimated hourly rate for principals of $67.20 (based on an average annual principal salary of $118,269.00 divided by 1,760 hours per school year (220 days, 8 hours each day)); and (3) an estimated hourly rate for superintendents of $86.59 (based on an average annual superintendent of schools salary of $166,244.00 divided by 1,920 hours per school year (240 days, 8 hours each day)). The Department anticipates that the proposed rule will impose the following costs on school districts/BOCES. The estimated costs below assume that school districts and BOCES will need to pay for extra time for personnel at current rates. However, most districts and BOCES are or should be performing these activities currently, but the State does not have data on the amount of hours currently dedicated to these activities.

Required Student Performance Category

The statute requires that a teacher or principal's evaluation be based on one required and one optional measure of student performance. For the required subcomponent, for teachers whose courses end in a State created or administered test for which there is a State-provided growth model and at least 50% of a teacher's students are covered under the State-provided growth measure, such teachers shall have a State-provided growth score based on such model. There are no additional costs beyond those imposed by statute for evaluating a teacher based on State assessments. For the required subcomponent, for principals with at least 30% of their students covered under a State-provided growth measure, such principal shall have a State-provided growth score and there are no additional costs beyond those imposed by statute.

For a teacher whose course does not end in a State created or administered test or where less than 50% of the teacher's students are covered under the State-provided growth measure, such teachers shall have a Student Learning Objective ("SLO") consistent with a goal setting process determined or developed by the Commissioner that results in a student growth score; provided that for any teacher whose course ends in a State created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. For a principal where less than 30% of their students are covered under a State-provided growth measure, such principals shall have a SLO consistent with a goal setting process determined by the Commissioner that results in a student growth score; provided that for any principal whose course building or program includes courses that ends in a State created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. The Department estimates that for teachers or principals who require SLOs, a teacher or principal will spend approximately 3 hours to set his/her goals for the year and that a principal/superintendent will take approximately 1 hour per year to work with a teacher/principal on the goal setting process. Based on the estimated hourly rates described above, the Department estimates that the goal-setting process will cost a school district/BOCES $226.74 per teacher (3 teacher hours to set goals plus 1 principal hour to review goals with teacher) and $288.19 per principal (3 principal hours to set goals plus 1 superintendent hour to review goals with principal). Moreover, districts and BOCES should have been setting SLOs for teachers and principals since 2012-2013 when districts and BOCES were first required to set SLOs under the evaluation system; except for the New York City School District, whose plan was imposed on them for the 2013-2014 school year pursuant to Education Law § 3012-c.

The SLO process also requires the use of a student assessment. In grades/subjects where no State created or administered assessment exists for such grades/subjects, the district/BOCES must use the SLO process with either an approved third-party assessment (at a cost per student of approximately $2.50-$14.00 per student), an approved district, regional, or BOCES developed assessment (which the Department expects would have minimal, if any costs), or a State assessment (which the Department expects would have no additional cost).

Optional Student Performance Category

For teachers, the second optional subcomponent shall be comprised of one or more the following options, as determined locally:

- A second State-provided growth score on a State-created or administered test; provided that the State provided growth measure is different than that used in the required subcomponent of the student performance category, which may include one or more of the following measures:
  - o a teacher-specific growth score computed by the State based on percentage of students who achieve a State-determined level of growth (e .g., percentage of students whose growth is above the median for similar students);
  - o school-wide growth results based on a State-provided school-wide growth score for all students attributable to the school who took the State English language arts or math assessment in grades 4-8; or
  - o school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed;
- A growth score based on a State designed supplemental assessment calculated using a State provided or approved growth model.

Since the second subcomponent is optional, there are no additional costs imposed by the statute or regulation for this subcomponent. However, if a district/BOCES elects to use a State-designed supplemental assessment, the Department estimates that the cost of purchasing an assessment may cost approximately $2.50-$14.00 per student, depending on the particular assessment selected. If a district/BOCES elects to use the second subcomponent and utilizes a second State-provided growth score, there should be no additional costs.

For principals, the second optional subcomponent shall be comprised of the one or more the following options, as determined locally:

- A second State-provided growth score on a State-created or administered test; provided that the State provided growth measure is different than that used in the required subcomponent of the student performance category, which may include one or more of the following measures:
  - o a principal-specific growth score computed by the State based on percentage of students who achieve a State-determined level of growth (e .g., percentage of students whose growth is above the median for similar students); or
  - o school-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed;
- A growth score based on a State designed supplemental assessment calculated using a State provided or approved growth model.

Since the second subcomponent is optional, there are no additional costs imposed by the statute or regulation for this subcomponent. However, if a district/BOCES elects to use a State-designed supplemental assessment, the Department estimates that the cost of purchasing an assessment may cost approximately $2.50-$14.00 per student, depending on the particular assessment selected. If a district/BOCES elects to use the second subcomponent and utilizes a second State-provided growth score, there should be no additional costs.

Teacher Observation/Principal School Visit Category

For the teacher observation/principal school visit category of the evaluation, the proposed amendment requires that ratings be based on at least two classroom observations for teachers and at least two school visits for principals. The proposed amendment requires at least one observation for teachers and at least one school visit for principal to be conducted by the supervisor/other trained administrator. The proposed amendment also requires at least one observation for teachers and at least one school visit for principals by trained independent evaluator(s) selected by the district. For teacher observations, the Department estimates the following costs:

Teacher Observations: While the regulation does not specifically prescribe how a district must conduct its observations, based on models currently in use, the Department expects a teacher will spend approximately 3 hours per classroom observation for pre- and post-conference meetings with the principal/evaluator and the 1 hour in the observation itself, which would equate to 6 hours per year (1 hour for the pre-conference, 1 hour for the observation, and 1 hour for the post-observation). Depending on the model used, these estimates could decrease to 1 hour and 10 minutes for classroom observations that include a post-conference and walkthrough observation with the principal/evaluator, which would equate to 2 hours and 20 minutes for the year. Based on the more extended observation model, the Department expects that a principal/evaluator would spend approximately 1 hour for a teacher classroom observation and 3 additional hours for pre-conference and post-conference meetings associated with the conference (1 hour for each pre-conference, 1 hour for preparation for post-conference, and 1 hour in post-conference), which would equate to 4 hours per observation or 8 hours per teacher per year. Therefore, for each teacher, a school district or BOCES would spend approximately $856.68 per year on classroom observations, under the proposed rule. The regulations allow for districts and BOCES to identify trained independent evaluators from within the district and, therefore, these estimates remain accurate as a yearly estimate for classroom observations. However, this cost may vary depending on what external independent evaluators the district selects.

Moreover, the Department has also revised the regulation to provide for a hardship waiver from the requirement for an independent observer for rural school districts and for school districts with one registered school who be unduly burdened if they were required to retain an independent evaluator. A school district would need to demonstrate that due to the size and limited resources of the school district it is unable to find an independent evaluator within a reasonable proximity to the school district. In lieu of an independent evaluator, the school district would be required to have a second evaluation conducted by a trained evaluator, who is different from the supervisor or evaluator who conducted the first evaluation.

Since the use of peer observers is optional, there are no additional costs imposed by the statute or regulation for this subcomponent. However, if a district/BOCES elects to use peer observers, the Department estimates that the use of a peer observer for teachers may cost approximately $372.26 per observation (total time for teacher observation cycle plus total time for peer observer in the teacher observation cycle times the teacher hourly rate), and will be dependent upon the particular parameters determined locally. Principal Assessment: The Department expects that a principal will spend approximately 3 hours preparing for a school visit by a supervisor/other trained administrator and that a supervisor/other trained administrator will spend approximately 3 hours assessing and observing a principal's practice per visit. Therefore, for each principal, a school district or BOCES would spend approximately $1325.94 per year on school site visits, under the proposed rule. The regulations allow for districts and BOCES to identify trained independent evaluators from within the district, therefore the estimate of $1325.94 remains accurate as a yearly estimate for school visits. This cost may vary upon the use of external independent evaluators.

Since the use of peer observers is optional, there are no additional costs imposed by the statute or regulation for this subcomponent. However, if a district/BOCES elects to use peer observers, the Department estimates that the use of a peer observer for principals may cost approximately $604.80 per site visit (total time for principal observation cycle plus total time for peer observer in the principal observation cycle times the principal hourly rate), and will dependent upon the particular parameters determined locally.

The proposed amendment also requires that the observations/school visits be based on a teacher or principal practice rubric approved by the Department or a rubric approved through a variance process. The majority of rubrics on the State's approved list are available to districts/BOCES at no cost. While some rubrics may offer training for a fee and others may require proprietary training, any costs incurred for training are costs imposed by the statute. Most rubric providers do not require a school district/BOCES to receive training through the provider and some providers even provide free online training. The Department estimates that districts/BOCES can obtain a teacher or principal practice in the following price range: $0-$360 per educator evaluated. Some practice rubrics may charge an additional fee for training on the rubric, estimated to cost approximately $0-$8,000, although most rubric providers do not require a user to receive training through the rubric provider.

Reporting and Data Collection

The proposed amendment requires that school districts or BOCES report information to the Department on enrollment and attendance data and any other student, teacher, school, course and teacher/student linkage data. The majority of this data is required to be reported under the America COMPETES Act (20 U.S.C. 9871). Therefore, no additional costs are imposed by the proposed amendment. To the extent such information is not required to be reported under federal law, the Department expects that most districts/BOCES already compile this information and, therefore, these reporting requirements are minimal and should be absorbed by existing district or BOCES resources.

The proposed amendment also requires that every teacher and principal be required to verify the subjects and/or student rosters assigned to them. This verification is part of the normal BEDS data verification process and therefore the Department believes that any costs imposed by this requirement in the regulation are minimal, if any. As for the additional reporting requirements contained in section 30-3.3 of the Rules of the Board of Regents, school districts or BOCES are required to report many of these requirements under the existing APPR regulations (section 30-2.3 of the Rules of the Board of Regents). Therefore, reporting of such information would not impose any additional costs on a school district or BOCES.

Vested Interest

The proposed amendment also requires that districts certify that teachers and principals not have a vested interest in the test results of students whose assessments they score. The Department believes that most districts already have this security mechanism in place, since it is a current requirement for evaluations conducted pursuant to Education Law § 3012-c. However, in the event a district currently allows a teacher to score their own assessment, the Department expects that districts/BOCES can assign other teachers or faculty to score such assessments. Therefore, the Department believes that any costs imposed by this requirement in the regulation are minimal, if any.

Scoring

The statute requires that a teacher receive an overall evaluation rating based on their ratings on the two categories (student performance and teacher observation/principal school visit). The proposed amendment sets forth the scoring ranges for the rating categories in these two categories and the overall rating category is prescribed by statute. The proposed amendment does not impose any additional costs beyond those imposed by statute.

Training

The statute requires that all evaluators be properly trained before conducting an evaluation. The proposed amendment requires that a lead evaluator be certified by the district/BOCES before conducting and/or completing a teacher's or principal's evaluation and that evaluators be properly trained. Since the training is required by statute, the only additional cost imposed are associated with the district or BOCES' certification and recertification of lead evaluators, which costs are expected to be negligible and capable of absorption using existing staff and resources.

Teacher and Principal Improvement Plans and Appeal Procedures

The statute, in subdivision 15 of § 3012-d, requires the Commissioner to determine the extent to which subdivisions 4, 5 and 5-a of § 3012-c should apply to the new evaluation system under § 3012-d. Subdivision 4 of § 3012-c requires school districts/BOCES to develop teacher and principal improvement plans for teachers rated Ineffective or Developing. Subdivision 5 of § 3012-crequires school districts and BOCES to develop an appeals procedure through which a teacher or principal may challenge their APPR. Subdivision 5-a of § 3012-c establishes special appeals procedures for the New York City School District. The proposed amendment does not impose any additional costs on districts/BOCES relating to the development of TIP/PIPs or an appeal procedure, beyond those currently imposed by statute under Education Law § 3012-c(4) and (5). The only changes made to the TIP/PIP requirement are with respect to its timing and the clarification that the superintendent or his/her designee, in the exercise of their pedagogical judgment develops the TIP/PIP. Neither change should generate additional costs. The only change made to the appeals provision is the clarification that an appeal from the substance of the evaluation, which is a ground for appeal under Education Law § 3012-c(5), includes an instance in which the teacher or principal receives a Highly Effective rating on the observation/school visit category and an Ineffective rating on the student performance category and challenges the result based on an anomaly, as determined locally. If a district/BOCES locally determines that an appeal based on an anomaly may be taken where such an appeal could not be brought previously, the Department believes this additional grounds for an appeal could be incorporated into the district's/BOCES' current appeal process and therefore no additional costs should incur. The new appeal process for the State-provided growth score will be performed by existing staff and therefore, the Department believes there will be no additional costs to the State government.

(c) Costs to private regulated parties: none, except that if a teacher/principal chooses to appeal his/her State-provided growth score, he/she must file an appeal within 20 days of receipt of his/her score or within 20 days of the effective date of the regulation, whichever is later.

(d) Costs to regulating agency for implementation and continued administration: See above.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

6. PAPERWORK:

Section 30-3.3 of the proposed amendment requires that each school district shall adopt an APPR plan for its classroom teachers and building principals and submit such plan to the Commissioner for approval. The Commissioner shall approve or reject the plan. The Commissioner may reject a plan that does not rigorously adhere to the regulations and the law. The regulations also provide that if any material changes are made to the plan, the district must submit the material changes by March 1 of each school year, on a form prescribed by the Commissioner, to the Commissioner for approval. This section also requires that the APPR plan describe the school district's or BOCES' process for ensuring that the Department receives accurate teacher and student data, including certain identified information; the assessment development, security and scoring processes utilized by the school district or BOCES, which includes a requirement that any process and assessment or measures are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score; describe the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

The proposed amendment also requires that the process by which points are assigned in the various subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year.

The proposed amendment requires that the entire annual professional performance review be completed and provided to the teacher or principal as soon as practicable but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured. The teacher's and principal's score and rating on the observation/school visit category and in the student performance category, if available, shall be computed and provided to the teacher or principal, in writing, by no later than the last day of the school year for which the teacher or principal is being measured, but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured.

A provider seeking to place a practice rubric in the list of approved rubrics, or an assessment on the list of approved assessments, shall submit to the Commissioner a written application that meets the requirements of sections 30-2.7 and 30-2.8, respectively. An approved rubric or approved assessment may be withdrawn for good cause. The governing body of each school district is required to ensure that evaluators have appropriate training before conducting an evaluation under this section and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher or principal is rated "Developing" or "Ineffective," the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP) that complies with section 30-3.11. Such plan shall be developed by the Superintendent or his or her designee, as part of his/her pedagogical judgement, and include identification of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed and, where appropriate, differentiated activities to support improvement in those areas.

In accordance with the requirements of the statute, the proposed amendment also requires a school district or BOCES to develop an appeals procedure through which a teacher or principal may challenge their annual professional performance review.

Education Law § 3012-d also requires the Commissioner to annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school district or BOCES identified by the Department in one of the categories enumerated above may be highlighted in public reports and/or the Commissioner may order a corrective action plan.

The proposed amendment also prohibits a student from being instructed by two teachers in the same subject, in two consecutive years, by teachers who are rated ineffective. If a school district assigns a student to a teacher in the same subject for two consecutive years, and the teacher is rated ineffective for two consecutive years, the school district must seek a waiver from the Commissioner for the specific teacher if (1) the district cannot make alternative arrangements to reassign the teacher to another grade/class due to a hardship and (2) the district has an improvement or removal plan in place for the teacher that meets guidelines prescribed by the Commissioner. The regulation also establishes an appeals process for teachers/principals who wish to challenge their State provided growth score. Teachers/ principals would be required to submit an appeal within 20 days of their receipt of a State-provided growth score or within 20 days of the effective date of the regulation, whichever is later, and school districts would have 10 days to reply.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

As explained in the Needs and Benefits section of this Statement, the Department considered the over 4,000 comments it received before the regulations were adopted and reviewed the materials submitted by stakeholders and experts at the Learning Summit, which are available on the Department's website at www.nysed.gov/content/learning-summit-submitted-materials. The Department presented its recommendations based on its analysis of the materials and presentations at the Learning Summit and sought feedback on various components of the new evaluation system from the Board of Regents at its May meeting. The Department presented a powerpoint presentation or slide deck to the Board of Regents, posted on our website at www.regents.nysed.gov/common/regents/files/meetings/May%202015/APPR.pdf, which explained the guiding principles and rationale for the Department's recommendations (see pp. 7-10). It further explained the 1-4 rubric scoring ranges recommended by NYSED, NYSUT and the NYC-Commissioner imposed rubric ranges for observations under Ed. Law § 3012-c (p.12) and the differences in differentiation that are produced using the NYSUT recommended and the Commissioner imposed NYC ranges (p.13).

The Department also provided recommendations for the number, frequency and duration of observations and the subcomponent weights for the observation category and recommendations on observation rubrics for the Board of Regents to consider, balancing the feedback it received from the field (p. 16, 18, 20).

It then produced the current scoring ranges for SLOs out of a 0-20 scale and the current method for determining points within the 0-20 scoring range for the State-provided growth score. The Department presented NYCDOE's and NYSUT's suggested cut scores (pp. 21-25) and recommended that the Board maintain the existing normative method to establish growth scores for the required and optional subcomponents of the student performance category. The Department further recommended that the Board maintain the full current list of characteristics in the growth model and that it explore with stakeholders and experts future options, new co-variates and possible adjustments to normative method and/or criterion referenced measures of growth (p. 26). The Department provided further recommendations on the optional subcomponent of the student performance category and the weightings for the student performance category (p. 27-30).

The Department then recommended that the principal system be aligned to the teacher evaluation system (p. 33) and provided recommendations to the Board on which provisions in Education Law § 3012-c should be continued under Education Law § 3012-d(15) (pg. 34-35). Recommendations were also provided on the waiver to assign students to an ineffective teacher for two consecutive years and the Hardship Waiver for November 15 approval deadline (p. 37).

After receiving input from the Board of Regents and stakeholders, the Department modified many of its May recommendations, which are reflected in red in the slide deck presented to the Board at its June meeting (www.regents.nysed.gov/common/regents/files/meetings//Revised%20Version%20of%20PowerPoint%20Presentation.pdf. The green text in the slide deck represents changes made to the recommendations during the June 2015 Regents meeting.

In response to field feedback, the Department revised its recommended rubric scoring ranges (pg. 7) to provide a range of permissible cut scores that reflected evidence of standards consistent with the four levels of the observation rubrics. The Department further recommended that the actual cut scores within the ranges be determined locally. The Department also changed its recommendations on the subcomponent weightings on the observation category (pg. 8) to lower the weightings for independent observers and provide for more local flexibility by setting minimum weights. The Department also changed its recommendations on the frequency and duration of observations to instead provide a statewide minimum standard of two observations, with the frequency and duration of such observations to be determined locally. Based on comment, the Department also changed its recommendation to require all annual observations to use the same rubric across all observer types (p. 11). The Department further clarified its recommendation around adjustments in performance measures for student characteristic and for small numbers of students (p. 15). The Department also changed its recommendations on scoring ranges for growth scores (p. 18) and the weightings for the student performance category (p. 19) when the optional subcomponent is used.

In response to feedback from the Board, the Department also adjusted its recommendations to include as possible grounds for a local appeal in instances where the student performance and observation categories produce anomalous results.

The Department further amended its recommendations regarding the continuation of the corrective action provisions in Education Law § 3012-c to § 3012-d.

9. FEDERAL STANDARDS:

There are no applicable Federal standards concerning the APPR for classroom teachers and building principals as established in Education Law §§ 3012-c and 3012-d.

10. COMPLIANCE SCHEDULE:

The proposed amendment will become effective on its stated effective date. No further time is needed to comply.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed rule implements, and otherwise conforms the Commissioner's Regulations to, Subparts D and E of Part EE of Ch.56, L.2015 and Ch. 20, L. 2015, relating to Annual Professional Performance Review (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES) in order to implement new Education Law § 3012-d. The rule does not impose any reporting, recordkeeping or other compliance requirements, and will not

have an adverse economic impact, on small business. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The rule applies to each of the approximately 695 school districts and 37 boards of cooperative educational services (BOCES) in the State.

2. COMPLIANCE REQUIREMENTS:

See Needs and Benefits and Paperwork sections of the Regulatory Impact Statement submitted herewith for an analysis of the compliance requirements for school districts and boards of cooperative educational services.

3. PROFESSIONAL SERVICES:

The proposed rule does not impose any additional professional services requirements on local governments beyond those imposed by, or inherent in, the statute.

4. COMPLIANCE COSTS:

See the Costs section of the Regulatory Impact Statement submitted herewith for an analysis of the costs of the proposed rule to school districts and BOCES.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on school districts or BOCES. Economic feasibility is addressed in the Costs section of the Regulatory Impact Statement submitted herewith.

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement, and otherwise conform the Commissioner's Regulations to, Subparts D and E of Part EE of Chapter 56 of the Laws of 2015 and Chapter 20 of the Laws of 2015 relating to the Annual Professional Performance Review (APPR) of classroom teachers and building principals. Since these provisions of the Education Law apply equally to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements.

The proposed rule reflects areas of consensus among stakeholders, and in areas where there were varying recommendations, the Department attempted to reconcile those differences to reflect best practices while also taking into consideration recommendations in the Testing Reduction Report regarding the reduction of unnecessary testing.

The Department also considered the comments from the school districts and BOCES during the 45-day public comment period under the State Administrative Procedure Act. As a result of these comments, the Department provided for a hardship waiver from the requirement for an independent observer for rural school districts and for school districts with one registered school who be unduly burdened if they were required to retain an independent evaluator. A school district would need to demonstrate that due to the size and limited resources of the school district it is unable to find an independent evaluator within a reasonable proximity to the school district. In lieu of an independent evaluator, the school district would be required to have a second evaluation conducted by a trained evaluator, who is different from the supervisor or evaluator who conducted the first evaluation.

7. LOCAL GOVERNMENT PARTICIPATION:

The new law requires the Commissioner to adopt regulations necessary to implement the evaluation system by June 30, 2015, after consulting with experts and practitioners in the fields of education, economics and psychometrics. It also required the Department to establish a process to accept public comments and recommendations regarding the adoption of regulations pursuant to the new law and consult in writing with the Secretary of the United States Department of Education on weights, measures and ranking of evaluation categories and subcomponents. It further required the release of the response from the Secretary upon receipt thereof, but in any event, prior to the publication of the regulations.

By letter dated April 28, 2015, the Department sought guidance from the Secretary of the United States Department of Education on the weights, measures and ranking of evaluation, as required under the new law and the Secretary responded.

In accordance with the requirements of the statute, the Department created an email box to accept comments on the new evaluation system (eval2015@nysed.gov). The Department has received and reviewed over 4,000 responses and has taken these comments into consideration in formulating the proposed amendments. In addition, the Department held a Learning Summit on May 7, 2015, wherein the Board of Regents hosted a series of panels to provide recommendations to the Board on the new evaluation system. Such panels included experts in education, economics, and psychometrics and State-wide stakeholder groups including but not limited to NYSUT, UFT, School Boards, NYSCOSS and principal and parent organizations. Since the new law was enacted in April, the Department also met with individual stakeholder groups to discuss their recommendations on the new evaluation system.

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 State statute. 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.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all school districts and boards of cooperative educational services (BOCES) in the State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

See the Needs and Benefits and Paperwork sections of the Regulatory Impact Statement submitted herewith for the reporting, recordkeeping, and other compliance requirements for school districts and BOCES, including those located in rural areas of the State. The rule does not impose any additional professional services requirements on local governments beyond those imposed by, or inherent in, the statute.

3. COSTS:

See the Costs section of the Regulatory Impact Statement submitted herewith for an analysis of the costs of the proposed rule, which include costs for school districts and BOCES across the State, including those located in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement, and otherwise conform the Commissioner's Regulations to, Subparts D and E of Part EE of Chapter 56 of the Laws of 2015, relating to the Annual Professional Performance Review (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES) in order to implement new Education Law § 3012-d. Because the statute upon which the proposed amendment is based applies to all school districts and BOCES in the State, 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.

The proposed rule reflects areas of consensus among stakeholders, and in areas where there were varying recommendations, the Department attempted to reconcile those differences to reflect best practices while also taking into consideration recommendations in the Testing Reduction Report regarding the reduction of unnecessary testing.

The Department also considered the comments from the school districts and BOCES during the 45-day public comment period under the State Administrative Procedure Act. As a result of these comments, the Department provided for a hardship waiver from the requirement for an independent observer for rural school districts and for school districts with one registered school who be unduly burdened if they were required to retain an independent evaluator. A school district would need to demonstrate that due to the size and limited resources of the school district it is unable to find an independent evaluator within a reasonable proximity to the school district. In lieu of an independent evaluator, the school district would be required to have a second evaluation conducted by a trained evaluator, who is different from the supervisor or evaluator who conducted the first evaluation.

5. RURAL AREA PARTICIPATION:

The new law requires the Commissioner to adopt regulations necessary to implement the evaluation system by June 30, 2015, after consulting with experts and practitioners in the fields of education, economics and psychometrics. It also required the Department to establish a process to accept public comments and recommendations regarding the adoption of regulations pursuant to the new law and consult in writing with the Secretary of the United States Department of Education on weights, measures and ranking of evaluation categories and subcomponents. It further required the release of the response from the Secretary upon receipt thereof, but in any event, prior to the publication of the regulations.

By letter dated April 28, 2015, the Department sought guidance from the Secretary of the United States Department of Education on the weights, measures and ranking of evaluation, as required under the new law and the Secretary responded.

In accordance with the requirements of the statute, the Department created an email box to accept comments on the new evaluation system (eval2015@nysed.gov). The Department has received and reviewed over 4,000 responses and has taken these comments into consideration in formulating the proposed amendments. In addition, the Department held a

Learning Summit on May 7, 2015, wherein the Board of Regents hosted a series of panels to provide recommendations to the Board on the new evaluation system. Such panels included experts in education, economics, and psychometrics and State-wide stakeholder groups including but not limited to NYSUT, UFT, School Boards, NYSCOSS and principal and parent organizations. Since the new law was enacted in April, the Department has also been separately meeting with individual stakeholder groups and experts in psychometrics to discuss their recommendations on the new evaluation system.

During the 45-day public comment, the Department also received comments from representatives of various school districts and BOCES located across the State, including those located in rural areas of the State. In an effort to address some of these concerns, the Department has revised the regulation in various places as discussed in the Regulatory Impact Statement, as submitted herewith.

Job Impact Statement

The purpose of proposed rule is to implement Subparts D and E of Part EE of Chapter 56 of the Laws of 2015 relating to Annual Professional Performance Reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services in order to implement Education Law § 3012-d. 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.

Assessment of Public Comment

The agency received no public comment.

EMERGENCY RULE MAKING

English Language Arts (ELA) Graduation Requirements

I.D. No. EDU-45-15-00013-E

Filing No. 61

Filing Date: 2016-01-12

Effective Date: 2016-01-25

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

Action taken: Amendment of section 100.5(g)(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), (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, who began grade 9 prior to 2013, to take the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2016 and June 2016 examination administrations, and meet the English requirement for graduation by passing either examination.

The proposed amendment was adopted as an emergency action at the October 26-27, 2015 Regents meeting, effective October 27, 2015. The proposed amendment has now been adopted as a permanent rule at the January 11-12, 2016 Regents meeting. Pursuant to SAPA § 203(1), the earliest effective date of the permanent rule is January 27, 2016, the date a Notice of Adoption will be published in the State Register. However, the October emergency rule will expire on January 24, 2016, 90 days after its filing with the Department of State on October 27, 2015.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed amendment adopted by emergency action at the October 2015 Regents meeting and adopted as a permanent rule at the January 2016 Regents meeting, remains continuously in effect until the effective date of its permanent adoption.

Subject: English Language Arts (ELA) graduation requirements.

Purpose: To provide additional opportunities for students who began grade 9 in 2013 to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core ELA examination at the January 2016 and June 2016 test administrations.

Text of emergency rule: Subparagraph (i) of paragraph (1) of subdivision (g) of section 100.5 of the Regulations of the Commissioner is amended, effective January 25, 2016, 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, August 2014, January 2015, June 2015, [and] August 2015, *January 2016 and June 2016* 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 only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-45-15-00013-EP, Issue of November 10, 2015. The emergency rule will expire March 11, 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

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 require students who began grade 9 in 2013 to meet diploma requirements by passing the Regents Examination in English Language

Arts that is aligned to the New York State P-12 Common Core Learning Standards. Section 100.5(g) was permanently adopted at the October 2013 Regents meeting. Included in that regulation is a provision in § 100.5(g)(1)(i)(b)(2) that allows, at local discretion, students who began grade 9 prior to 2013 who were enrolled in Common Core English courses to take the Regents Comprehensive Examination in English (2005 Learning Standards) in addition to the Regents Examination in ELA (Common Core) and meet the English requirement for graduation by passing either examination. This flexibility was initially limited to the June 2014 and August 2014 test administrations, but was subsequently extended to the January 2014 and January, June and August 2015 test administrations.

The proposed amendment would extend that flexibility to the final two administrations of the Regents Comprehensive Examination in English (2005 Learning Standards) in January 2016 and June 2016. This flexibility would continue to apply only to students who began grade 9 prior to 2013 and have already had access to the Regents Comprehensive Examination in English (2005 Learning Standards).

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 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, who began grade 9 prior to 2013, to meet diploma requirements by taking the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2016 and June 2016 examination administrations, and meet the English requirement for graduation by passing either examination.

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 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, who began grade 9 prior to 2013, to meet diploma requirements by taking the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2016 and June 2016 examination administrations, and meet the English requirement for graduation by passing either examination.

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 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, who began grade 9 prior to 2013, to meet diploma requirements by taking the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2016 and June 2016 examination administrations, and meet the English requirement for graduation by passing either examination.

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 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, who began grade 9 prior to 2013, to meet diploma requirements by taking the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2016 and June 2016 examination administrations, and meet the English requirement for graduation by passing either examination.

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 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, who began grade 9 prior to 2013, to meet diploma requirements by taking the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2016 and June 2016 examination administrations, and meet the English requirement for graduation by passing either examination.

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 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, who began grade 9 prior to 2013, to meet diploma requirements by taking the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2016 and June 2016 examination administrations, and meet the English requirement for graduation by passing either examination.

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 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, who began grade 9 prior to 2013, to meet diploma requirements by taking the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2016 and June 2016 examination administrations, and meet the English requirement for graduation by passing either examination.

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 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, who began grade 9 prior to 2013, to meet diploma requirements by taking the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2016 and June 2016 examination administrations, and meet the English requirement for graduation by passing either examination.

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 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, who began grade 9 prior to 2013, to meet diploma requirements by taking the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2016 and June 2016 examination administrations, and meet the English requirement for graduation by passing either examination. 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 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, who began grade 9 prior to 2013, to meet diploma requirements by taking the Regents Comprehensive Examination in English in addition to the Regents Examination in English Language Arts (Common Core) at the January 2016 and June 2016 examination administrations, and meet the English requirement for graduation by passing either examination.

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.

NOTICE OF ADOPTION

Annual Professional Performance Reviews of Classroom Teachers and Building Principals

I.D. No. EDU-27-15-00019-A
Filing No. 63
Filing Date: 2016-01-12
Effective Date: 2016-01-27

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

Action taken: Amendment of section 100.2(o) and Subpart 30-2; and addition of Subpart 30-3 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1), (2), 3009(1), 3012-c(1-10) and 3012-d(1-15); L. 2015, chs. 20 and 56, part EE, Subparts D and E

Subject: Annual Professional Performance Reviews of Classroom Teachers and Building Principals.

Purpose: To Implement subparts D and E of part EE of chapters 20 and 56 of the Laws of 2015.

Text or summary was published in the July 8, 2015 issue of the Register, I.D. No. EDU-27-15-00019-P.

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

Revised rule making(s) were previously published in the State Register on October 7, 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@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

English Language Arts (ELA) Graduation Requirements

I.D. No. EDU-45-15-00013-A
Filing No. 60
Filing Date: 2016-01-12
Effective Date: 2016-01-27

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

Action taken: Amendment of section 100.5(g)(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), (2), 308(not subdivided), 309(not subdivided) and 3204(3)

Subject: English Language Arts (ELA) graduation requirements.

Purpose: To provide additional opportunities for students who began grade 9 in 2013 to meet diploma requirements by passing either the Regents Comprehensive Examination in English or the Common Core ELA examination at the January 2016 and June 2016 test administrations.

Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. EDU-45-15-00013-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@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 2020, which is the 4th or 5th year after the

year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Continuing Education Requirements for Licensed Marriage and Family Therapists

I.D. No. EDU-45-15-00015-A

Filing No. 67

Filing Date: 2016-01-12

Effective Date: 2017-01-01

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

Action taken: Addition of section 79-10.8 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 212(3), 6504 (not subdivided), 6507(2)(a) and 8412; L. 2013, ch. 486; L. 2014, ch. 15

Subject: Continuing education requirements for Licensed Marriage and Family Therapists.

Purpose: Implement mandatory continuing education requirements, establish standards for acceptable education and approval of providers.

Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. EDU-45-15-00015-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@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 2021, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the November 10, 2015 State Register, the State Education Department received the following comments:

1. COMMENT:

One commenter recommends that individuals, who are licensed in more than one profession established under Article 163 of the Education Law (e.g., mental health counseling and marriage and family therapy), be allowed to use a course they had taken to satisfy the continuing education (CE) requirements of one profession to satisfy the CE requirements of another profession(s). The commenter recommended a single consolidated provider application for qualified entities that seek to offer CE to more than one of the mental health practitioner (MHP) professions.

DEPARTMENT RESPONSE:

Education Law § 8412(3)(b) requires licensees to complete CE courses from a Department approved provider. The commenter's recommendation is consistent with the language and intent of the statute and the proposed rules. The Department will take under consideration the commenter's recommendation to allow a prospective CE provider to submit one application and fee for approval to offer courses to one or more of the MHP professions. However, such courses must be consistent with the profession-specific requirements for each of the MHP professions for which the provider is seeking to offer courses, and would not be acceptable for individuals licensed in another profession established in the Education Law outside of Article 163 (e.g., licensed clinical social work), unless the provider applies and meets the requirements to become an approved provider for that profession under applicable provisions of the Education Law and Regulations of the Commissioner of Education (e.g., for licensed clinical social work, Education Law § 7710[3][b] and 8 NYCRR § 74.10[c][3][ii]).

The Department appreciates the comment and notes that no changes are necessary to implement these regulatory provisions.

NOTICE OF ADOPTION

Continuing Education Requirements for Licensed Creative Arts Therapists

I.D. No. EDU-45-15-00016-A

Filing No. 64

Filing Date: 2016-01-12

Effective Date: 2017-01-01

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

Action taken: Addition of section 79-11.8 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 212(3), 6504 (not subdivided), 6507(2)(a) and 8412; L. 2013, ch. 486; L. 2014, ch. 15

Subject: Continuing education requirements for Licensed Creative Arts Therapists.

Purpose: Implement mandatory continuing education requirements, establish standards for acceptable education and approval of providers.

Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. EDU-45-15-00016-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@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 2021, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the November 10, 2015 State Register, the State Education Department received the following comments:

1. COMMENT:

A music therapy association and several individual members asserted that the $900 application fee for prospective continuing education (CE) providers proposed in section 79-11.8(j)(3) is "exorbitant" and may result in a shortage of qualified entities and individuals seeking to offer CE.

These commenters asked that the $900 application fee be waived for higher education institutions in New York (NY) that offer a degree program registered as leading to licensure in creative arts therapy and for providers who hold "Pre-Approved Provider" status from the Certification Board for Music Therapists (CBMT).

DEPARTMENT RESPONSE:

The proposed $900 fee authorizes an approved provider to offer CE for three years, at an effective cost of $300 per year. The $900 fee is the same amount charged to prospective CE providers in 22 of the 26 other professions with mandatory CE and allows an approved provider to offer unlimited courses. Education Law § 8412(3)(b) requires prospective CE providers to submit an application and pay a fee to the Department, pursuant to the Commissioner's Regulations. Therefore, the proposed fee is consistent with Department policy and the statute.

Education Law § 8412(3)(b) requires an application and fee and does not give the Department authority to waive this fee for any prospective CE providers.

2. COMMENT:

A music therapy association and several individual members recommended that "diversity" be added to the acceptable subject provisions in section 79-11.8(c)(2)(i)(a).

DEPARTMENT RESPONSE:

The list of acceptable subjects is non-exhaustive, which means that an approved CE provider could offer a course on diversity, as long as it is related to the practice of creative arts therapy (CAT).

3. COMMENT:

A music therapy association and several individual members commented that the proposed credits for the activities specified in section 79-11.8(c)(2)(ii)(b) are less than those allowed by CBMT.

DEPARTMENT RESPONSE:

The CE hours in the proposed rule for the specified acceptable activities are consistent with provisions in other professions, e.g., physical therapy,

and social work. The Department must promulgate regulations consistent with NY law, which requires 36 hours over a 36-month registration period or the equivalent of one hour each month. The commenters referenced CBMT, which requires 100 hours over a 60-month certification period or 1.6 hours per month and provides more "generous" hours for comparable activities to meet a total requirement that is nearly 3 times higher than the CE required by NY law. The proposed regulation is consistent with NY law. Licensees who choose to hold a private credential will continue to receive credit for the activities acceptable to such accrediting body, including credit for activities that may not be acceptable for satisfying NY's mandatory CE requirements.

4. COMMENT:

An association of music therapists and several individual members opined that participation in a juried art show or performance, as defined in section 79-11.8(c)(2)(ii)(b)(7), should not be considered acceptable CE because participation in these activities does not support the development or advancement of the responsive and reflexive skills utilized by licensed creative arts therapists (LCATs) and mental health providers. The commenters request that these provisions be removed from the proposed rule.

DEPARTMENT RESPONSE:

Education Law § 8404(1)(a) defines the practice of CAT as the "assessment, evaluation, and the therapeutic intervention and treatment, which may be either primary, parallel or adjunctive, of mental, emotional, developmental and behavioral disorders through the use of the arts as approved by the department." The use of the arts, which are defined in section 52.34(b) of the Commissioner's Regulations and the proposed rule, provides that acceptable CE includes, but is not limited to art, music, dance, drama, psychodrama or poetry therapies, for the practice of the profession. The proposed rule was developed with the assistance of the State Board for Mental Health Practitioners (MHP), whose members include three LCATs, who recommended these specific provisions because, in drama therapy, as well as in other types of CAT, LCATs consider the ongoing development of their skill set to include the art form itself and engaging in the art form itself is a rigorous process that builds such skills. It is not necessary to amend the proposed rule, as these activities would be acceptable for LCATs using art, dance, drama and other authorized interventions.

5. COMMENT:

A licensee suggested further conversation with CBMT before the CE requirements are confirmed.

DEPARTMENT RESPONSE:

The proposed rule was developed with the assistance of the State Board for MHP, whose members include three LCATs, and 13 other members. The State Board assists the Board of Regents and the Department in regulating the licensing and practice of the professions. These provisions were discussed at several public State Board meetings. Professional associations and individuals also had the opportunity to comment throughout the development of the rule, as well as after its publication, in accordance with the State Administrative Procedure Act (SAPA). The proposed rule is in accordance with the authorizing law and is consistent with the Department's CE regulations and policies in 26 other professions. Therefore, at this time, the Department respectfully disagrees with the commenter's suggestion that further conversation between the Department and CBMT should occur before these CE provisions are presented to the Board of Regents for permanent adoption.

6. COMMENT:

An LCAT commented that mandatory CE that goes beyond CBMT's CE require-ments would be a financial and temporal hardship and suggested that meeting the CBMT CE requirements should be sufficient.

Another LCAT suggested that the [CBMT] 100 hour acceptable [CE] requirement over a 5-year period provides greater flexibility than the proposed regulation and also asked for a more "affordable method" of CE.

DEPARTMENT RESPONSE:

The proposed rule is consistent with Education Law § 8412(3)(b), which requires LCATs to take courses from Department approved providers, based on an application and fee, and the implementation of CE requirements in other licensed professions, in-cluding social work, physical therapy and massage therapy. Thus, the commenters' suggested alternative for satisfying the statutorily mandated CE requirements is contra-ry to the statute because the Department does not have the authority to adopt CBMT's or any other organizations' CE requirements for the purposes of satisfying its CE re-quirements. Additionally, a licensee who fails to meet these CE requirements may not register and practice CAT in NY as of January 1, 2017. The private credential does not authorize the practice of the profession in NY and, in any choice between a license and a credential; the licensee's responsibility is to comply with the applicable NY laws, rules and regulations to ensure competent and lawful professional practice.

7. COMMENT:

A private organization, that is an approved CE provider through CBMT, opined that the Department's review and approval processes for prospective CE providers would restrict access to its courses by NY licensees. The commenter suggested it will not seek approval in NY and "would unfortunately not be able to continue to serve hundreds of music therapists LCATs in [NY]."

DEPARTMENT RESPONSE:

Education Law § 8412(3)(b) requires LCATs to take courses from Department approved providers on the basis of an application and fee, pursuant to the Commissioner's Regulations. The proposed rule is consistent with the statute. Similar regulations for social work CE have resulted in more than 320 provider applications and fees in a little over 12 months from national and state associations, higher education institutions, employers and individuals. Since January 1, 2015, more than 240 providers have been approved and additional information or clarification has been requested from 79 other applicants in the social work professions. The Department's experience with the implementation of the social work CE requirements suggests that there will be sufficient providers to meet the demand for CE in CAT.

8. COMMENT:

A licensee suggested that the $900 fee to become an approved provider is overly expensive, as many trainings draw from six to 15 participants and would not allow the licensee to recoup the application fee.

DEPARTMENT RESPONSE:

The proposed $900 fee is consistent with the fee in more than 20 other professions with mandatory CE and, in those professions, the fee is not adjusted based on the number of learners in a course or the number of proposed courses. When a provider is approved, the entity may offer one or more courses multiple times and in various formats (in-person, online or self-study) during the three-year period without paying any additional fees.

9. COMMENT:

A commenter suggested that LCATs could not take courses offered by a psychologist or an organization that is approved to provide CE to other professions, such as licensed clinical social workers.

DEPARTMENT RESPONSE:

The comment is inaccurate as the proposed regulation defines acceptable subjects as including, but not limited to, cross-disciplinary offerings from behavioral and social sciences related to CAT practice. A provider who is approved to offer CE to licensed social workers could be eligible to apply to offer CE to LCATs.

10. COMMENT:

One commenter recommends that individuals, who are licensed in more than one profession established under Article 163 of the Education Law (e.g., mental health counseling and marriage and family therapy), be allowed to use a course they had taken to satisfy the CE requirements of one profession to satisfy the CE requirements of another profession(s). The commenter recommended a single consolidated provider application for qualified entities that seek to offer CE to more than one of the MHP professions.

DEPARTMENT RESPONSE:

Education Law § 8412(3)(b) requires licensees to complete CE courses from a Department approved provider. The commenter's recommendation is consistent with the language and intent of the statute and the proposed rule. The Department will consider the recommendation to allow a prospective CE provider to submit one application and fee for approval to offer courses to one or more of the MHP professions. Such courses must be consistent with the profession-specific requirements for each of the MHP professions for which the provider is seeking to offer courses, and would not be acceptable for individuals licensed in another profession established in the Education Law outside of Article 163 (e.g., licensed clinical social work), unless the provider applies and meets the requirements to become an approved provider for that profession under applicable provisions of the Education Law and the Commissioner's Regulations (e.g., for licensed clinical social work, Education Law § 7710[3][b] and 8 NYCRR § 74.10[c][3][ii]).

11. COMMENT:

Commenters suggested that an individual or an organization that is credentialed as a trainer by a private credentialing organization be deemed as a qualified LCAT provider without having to submit an application or fee, to ensure an adequate pool of approved providers, particularly in rural areas.

DEPARTMENT RESPONSE:

The suggestions are inconsistent with the statute, which requires all prospective CE providers to submit an application and a fee to the Department, and meet all requirements established in the Commissioner's Regulations. The law does not authorize the Department to waive the provider process or fee based on geographic or other considerations. It is also likely that licensees will have access to online content and conferences throughout the U.S. offered by Department-approved providers, as in other professions.

12. COMMENT:

An LCAT expressed the hope that national and regional music therapy conferences will be acceptable to the Department and asked if every breakout session attended at such conferences will be acceptable and how attendance will be tracked and accepted.

DEPARTMENT RESPONSE:

If the national or regional organization is a Department approved CE provider, instruction offered at conferences could be considered acceptable CE in NY. Conferences and training activities do not have to take place in NY to be acceptable, if the provider has been approved by the Department. Section 79-11.8(c)(2) of the proposed regulations define acceptable and prohibited subjects; section 79-11.8(i) sets out the record-keeping process for an approved provider; and section 79-11.8(g) establishes record-keeping requirements for licensees who must attest to meeting the CE requirement to complete their triennial registration.

NOTICE OF ADOPTION

Continuing Education Requirements for Licensed Mental Health Counselors

I.D. No. EDU-45-15-00017-A

Filing No. 66

Filing Date: 2016-01-12

Effective Date: 2017-01-01

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

Action taken: Addition of section 79-9.8 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 212(3), 6504 (not subdivided), 6507(2)(a) and 8412; L. 2013, ch. 486; and L. 2014, ch. 15

Subject: Continuing education requirements for Licensed Mental Health Counselors.

Purpose: Implement mandatory continuing education requirements, establish standards for acceptable education and approval of providers.

Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. EDU-45-15-00017-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the November 10, 2015 State Register, the State Education Department received the following comments:

1. COMMENT:

One commenter recommends that individuals, who are licensed in more than one profession established under Article 163 of the Education Law (e.g., mental health counseling and marriage and family therapy), be allowed to use a course they had taken to satisfy the continuing education (CE) requirements of one profession to satisfy the CE requirements of another profession(s). The commenter recommended a single consolidated provider application for qualified entities that seek to offer CE to more than one of the mental health practitioner (MHP) professions.

DEPARTMENT RESPONSE:

Education Law § 8412(3)(b) requires licensees to complete CE courses from a Department approved provider. The commenter's recommendation is consistent with the language and intent of the statute and the proposed rules. The Department will take under consideration the commenter's recommendation to allow a prospective CE provider to submit one application and fee for approval to offer courses to one or more of the MHP professions. However, such courses must be consistent with the profession-specific requirements for each of the MHP professions for which the provider is seeking to offer courses, and would not be acceptable for individuals licensed in another profession established in the Education Law outside of Article 163 (e.g., licensed clinical social work), unless the provider applies and meets the requirements to become an approved provider for that profession under applicable provisions of the Education Law and Regulations of the Commissioner of Education (e.g., for licensed clinical social work, Education Law § 7710[3][b] and 8 NYCRR § 74.10[c][3][ii]).

The Department appreciates the comment and notes that no changes are necessary to implement these regulatory provisions.

NOTICE OF ADOPTION

Continuing Education Requirements for Licensed Psychoanalysts

I.D. No. EDU-45-15-00018-A

Filing No. 65

Filing Date: 2016-01-12

Effective Date: 2017-01-01

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

Action taken: Addition of section 79-12.8 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 212(3), 6504 (not subdivided), 6507(2)(a) and 8412; L. 2013, ch. 486; L. 2014, ch. 15

Subject: Continuing education requirements for Licensed Psychoanalysts.

Purpose: Implement mandatory continuing education requirements, establish standards for acceptable education and approval of providers.

Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. EDU-45-15-00018-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@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 2021, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the November 10, 2015 State Register, the State Education Department received the following comments:

1. COMMENT:

One commenter recommends that individuals, who are licensed in more than one profession established under Article 163 of the Education Law (e.g., mental health counseling and marriage and family therapy), be allowed to use a course they had taken to satisfy the continuing education (CE) requirements of one profession to satisfy the CE requirements of another profession(s). The commenter recommended a single consolidated provider application for qualified entities that seek to offer CE to more than one of the mental health practitioner (MHP) professions.

DEPARTMENT RESPONSE:

Education Law § 8412(3)(b) requires licensees to complete CE courses from a Department approved provider. The commenter's recommendation is consistent with the language and intent of the statute and the proposed rules. The Department will take under consideration the commenter's recommendation to allow a prospective CE provider to submit one application and fee for approval to offer courses to one or more of the MHP professions. However, such courses must be consistent with the profession-specific requirements for each of the MHP professions for which the provider is seeking to offer courses, and would not be acceptable for individuals licensed in another profession established in the Education Law outside of Article 163 (e.g., licensed clinical social work), unless the provider applies and meets the requirements to become an approved provider for that profession under applicable provisions of the Education Law and Regulations of the Commissioner of Education (e.g., for licensed clinical social work, Education Law § 7710[3][b] and 8 NYCRR § 74.10[c][3][ii]).

The Department appreciates the comment and notes that no changes are necessary to implement these regulatory provisions.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Procedures for State-Level Review of Impartial Hearing Officer Determinations Regarding Services for Students with Disabilities

I.D. No. EDU-04-16-00004-P

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

Proposed Action: Amendment of Part 279 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 301(not subdivided), 311(1), 4403(1), (3), 4404(2) and 4410(13)

Subject: Procedures for State-level review of impartial hearing officer determinations regarding services for students with disabilities.

Purpose: To revise the procedures for appealing impartial hearing officer decisions to a State review officer.

Public hearing(s) will be held at: 1:00 p.m.-4:00 p.m., Feb. 25, 2016 at State Education Building, Rms. 5A and 5B, 89 Washington Ave., Albany, NY; (Videoconference) Office of Professional Discipline, Regional Office, 85 Allen St., Suite 120, Rochester, NY; 1:00 p.m.-4:00 p.m., Feb. 26, 2016 at State Education Building, Rms. 5A and 5B, 89 Washington Ave., Albany, NY; (Videoconference) 55 Hanson Place, Rm. 416, Brooklyn, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule (Full text is posted at the following State website:www.sro.nysed.gov): The State Education Department proposes to amend Part 279 of the Regulations of the Commissioner of Education, effective July 1, 2016. The following is a summary of the substantive provisions of the proposed rule.

Sections 279.1, 279.2, and 279.10 are amended to remove cross-references to Parts 275 and 276 of the Regulations of the Commissioner.

Section 279.1 is amended to clarify the scope of a State Review Officer's jurisdiction and define the Office of State Review.

Section 279.2 is amended to clarify that a party seeking review of an impartial hearing officer's decision must personally serve a notice of intention to seek review and request for review upon the opposing party; that a school district must file a certified copy of the hearing record with the Office of State Review; defines the parties as petitioner and respondent; adds a requirement that a respondent who intends to cross-appeal file a notice of intention to do so; requires parties to serve a statement of those issues the party seeks to have reviewed along with the notice of intention; and permits a State Review Officer to review a determination despite a party's failure to timely serve a notice of intention to seek review.

Section 279.3 is amended to modify the notice that must be served with a request for review.

Section 279.4 is amended to modify the timelines for serving the request for review; clarifies the requirements for personal service and specifies the permissible scope of alternate service; and clarifies that a memorandum of law must be served and filed together with the request for review.

Section 279.5 is amended to modify the time in which an answer to a petition or a cross-appeal must be served; provide that a notice of intention to cross-appeal must be filed with the Office of State Review along with an answer with cross-appeal; and clarifies that a memorandum of law must be served and filed together with an answer or answer with cross-appeal.

Section 279.6 is amended to clarify the permissible scope of a reply and the acceptable methods of service; and to specify that a State Review Officer may require the parties to clarify pleadings or submit further briefing of issues on request.

Section 279.7 is amended to clarify that all papers submitted to a State Review Officer in connection with an appeal must be endorsed with the name, mailing address, and telephone number of the party submitting the papers, or the party's attorney if represented by counsel; provides a form affidavit for verification of pleadings; and clarifies that oaths may be taken before any person authorized by any state to administer oaths.

Section 279.8 is amended to clarify that pleadings must be signed by an attorney or by a party if the party is not represented by counsel; modify the permissible lengths of pleadings and memoranda of law; clarify the proper form of pleadings and clarify that issues not properly identified will not be addressed; clarify the proper scope of a memorandum of law; requiring parties to submit electronic copies of pleadings and memoranda; and providing that filing of pleadings and memoranda is complete upon receipt by the Office of State Review.

Section 279.9 is amended to clarify the contents of the hearing record, including the contents of the hearing record in an appeal from an impartial hearing officer's interim determination on pendency; and provide that a State Review Officer has the discretion to impose penalties for the failure of a board of education to file a complete and certified hearing record within the necessary timelines.

Section 279.10 is amended to clarify that a State Review Officer may remand a matter to an impartial hearing officer to take additional evidence or make additional findings and clarify procedures relating to extensions of time to answer, cross-appeal, or reply.

Section 279.11 is amended to clarify the procedures relating to computation of days within which service of pleadings must be made.

Section 279.12 is amended to clarify that the finality of a State Review Officer's decision does not preclude the Office of State Review from correcting typographical or clerical errors, which do not result in a change to the factual or legal basis of the State Review Officer's decision.

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 Avenue, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Justyn P. Bates, State Review Officer, State Education Department, Office of State Review, 80 Wolf Road, Suite 203, Albany, NY 12205, (518) 485-9373, email: osrcomment@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 Education Department, with the Board of Regents as its head, and authorizes the Regents to appoint the Commissioner as chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 provides the Regents with authority to establish the educational policies of the State and to adopt rules to carry into effect such policies and the powers and duties of the Department under the laws relating to education.

Education Law section 301 authorizes the Regents to adopt rules conferring and imposing upon the Commissioner such additional powers and duties as may be required for the effective administration of the Department and of the State system of education.

Education Law section 311(1) authorizes the Commissioner to regulate the practice of appeals from actions of local school officials brought pursuant to Education Law section 310.

Education Law section 4403(1) and (3) provide the Department with general authority to adopt regulations concerning the provision of a free appropriate public education to students with disabilities.

Education Law section 4404(2) provides for the review of determinations of impartial hearing officers regarding services for students with disabilities by a State Review Officer, and directs the Commissioner to adopt regulations governing the practice and procedures to be followed in proceedings before the State Review Officer.

Education Law section 4410(13) authorizes the Commissioner to adopt regulations to implement the provisions of that statue, including the requirement that a State Review Officer review the decision of an impartial hearing officer in the manner prescribed by Education law section 4404(2).

2. LEGISLATIVE OBJECTIVES:

The proposed amendment provides clarification of the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, pursuant to the authority conferred on the Commissioner by the aforementioned statutes to regulate the practice and procedures to be followed in proceedings before State Review Officers.

3. NEEDS AND BENEFITS:

The proposed amendment is needed to correct citations and references, provide clarification of the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, and to expedite and otherwise facilitate the processing of requests for review to State Review Officers.

The revisions to sections 279.1, 279.2, and 279.10 remove cross-references to Parts 275 and 276 of the Regulations of the Commissioner, to make it easier for unrepresented parties to access the appeal process.

The revisions to section 279.1 clarify the scope of a State Review Officer's jurisdiction and define the Office of State Review.

The revisions to section 279.2 require that any party seeking review of an impartial hearing officer's decision must personally serve a notice of

intention to seek review or cross-appeal on the opposing party and requires parties to serve a statement of those issues the party seeks to have reviewed along with the notice of intention. This modification will provide notice to the opposing party regarding which of the impartial hearing officer's determinations will be appealed. The revision also codifies State Review Officer precedent permitting review of an impartial hearing officer's determination despite a party's failure to timely serve a notice of intention.

The revisions to section 279.3 modify the notice that must be served with a request for review to comply with the proposed amendments.

The revisions to section 279.4 set a single timeline for serving a request for review on the opposing party, simplifying the appeal process. The revisions also clarify the requirements for personal service and the permissible scope of alternate service, alleviating confusion and reducing the need for State Review Officers to issue ad hoc determinations. Finally, the revisions clarify that a memorandum of law must be served and filed together with the request for review. This will alleviate confusion from the current wording of the regulations, which some parties took to mean to permit them to file a memorandum of law at any time during the appeal process.

The revisions to section 279.5 reduce the time in which an answer to a petition or a cross-appeal must be served, facilitating the ability of State Review Officers to comply with federally-mandated decision timelines. In conjunction with section 279.2, requiring that any party seeking review must file a notice of intention to do so prevents any possible prejudice to parents of students with disabilities. The revisions also clarify that a memorandum of law must be served and filed together with an answer or answer with cross-appeal.

The revisions to section 279.6 clarify the permissible scope of a reply, alleviating the submission of and need to address pleadings outside the intended purpose of a reply. The clarification that a State Review Officer may require the parties to clarify pleadings or submit further briefing of issues on request will permit the State Review Officer to effectuate his or her authority to ensure adequate argument on which to decide all issues raised by the parties.

The revisions to section 279.7 provide a necessary clarification now that Part 279 no longer explicitly cross-references Parts 275 and 276 or the regulations of the Commissioner.

The revisions to section 279.8 clarify requirements regarding the form and scope of pleadings and memoranda of law; require parties to submit electronic copies of pleadings and memoranda; and provide that filing of pleadings and memoranda is complete upon receipt by the Office of State Review. Each of these modifications will facilitate the timely review of impartial hearing officer decisions by State Review Officers, by requiring parties to more clearly state their arguments on appeal and ensuring that State Review Officers are vested with the discretion no to consider papers that are not timely filed with the Office of State Review.

The revisions to section 279.9 clarify the contents of the hearing record and vest State Review Officers with the discretion to impose sanctions for the failure of a board of education to file a complete and certified hearing record within the necessary timelines. These revisions are necessary to address the failure of boards of education to consistently timely file complete and accurate hearing records, significantly infringing on the ability of State Review Officers to timely issue decisions in compliance with State and federal law.

The revisions to section 279.10 clarify that a State Review Officer may remand a matter to an impartial hearing officer and clarify procedures relating to extensions of time. These revisions are necessary to clarify the scope of a State Review Officer's authority to ensure that the parties and impartial hearing officer comply with State and federal requirements.

The revisions to section 279.11 clarify the computation of days within which service of pleadings must be made.

The revisions to section 279.12 clarify that the Office of State Review may correct typographical or clerical errors not affecting the factual or legal basis of a State Review Officer's decision.

4. COSTS:

Costs to State government: none.

Costs to local governments:It is expected that any additional costs will be minimal, and will be absorbed using existing staff and resources.

Costs to private regulated parties: none.

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

The proposed amendment corrects citations and references, provides clarification of the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, and adds provisions to expedite and otherwise facilitate the processing of requests for review to State Review Officers. The proposed clarifications in the format of pleadings and memoranda of law as well as filing requirements will reduce the need of parties and staff of Office of State Review (OSR) to spend time clarifying these issues on a case-by-case basis, and overall will result in a reduction of associated costs to both parties and OSR staff.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearing relating to the provision of special education to students with disabilities by school districts. The proposed amendment is needed to correct citations and references, provide clarification of the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, and to expedite and otherwise facilitate the processing of requests for review to State Review Officers.

Section 279.1, as revised, clarifies the scope of a State Review Officer's jurisdiction.

Sections 279.2, 279.3, 279.4, 279.5, 279.6, and 279.11, as revised, clarify the timelines and procedures for service on opposing parties and filing of documents with the Office of State Review.

Sections 279.7 and 279.8, as revised, clarify the format of papers filed with the Office of State Review.

Section 279.9, as revised, clarifies the contents of the hearing record a board of education involved in an appeal to a State Review Officer must file with the Office of State Review.

Section 279.10, as revised, provides that a party seeking an extension of time to file an answer, cross-appeal, or reply must establish good cause for its application and indicate whether the student who is the subject of the appeal is currently receiving special education services.

6. PAPERWORK:

The proposed amendment requires the service and filing of a form containing information already required to be provided by parties to State-level review of determinations of impartial hearing officers.

7. DUPLICATION:

The proposed amendment is consistent with Federal and State requirements concerning the provision of special education services to students with disabilities and does not duplicate, overlap or conflict with such requirements.

8. ALTERNATIVES:

There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the Federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

It is anticipated that parties will be able to comply with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearings relating to the provision of special education to students with disabilities by school districts. The rule does not apply to small businesses since they are not parties to such hearings. The amendment will not impose any additional reporting, recordkeeping or other compliance requirements on small businesses, nor will it have any adverse economic impact on small businesses. Because it is evident from the nature of the rule that it does not apply to small businesses, no further steps were needed to ascertain that fact and none were taken. Therefore, 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 is applicable to each of the 695 public school districts in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearing relating to the provision of special education to students with disabilities by school districts. The proposed amendment is needed to correct citations and references, provide clarification of the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, and to expedite and otherwise facilitate the processing of requests for review to State Review Officers.

Section 279.2, as revised, will require a board of education which seeks review of the determination of an impartial hearing officer to serve and file a form containing information the board of education is already required to include in pleadings served on the opposing party and filed with the Office of State Review.

3. PROFESSIONAL SERVICES:

The proposed amendment will not increase the level of professional services needed by local governments to comply with its requirements. By clarifying matters concerning documents filed with the Office of State Review, the proposed amendment will reduce the need for professional services regarding routine matters.

4. COMPLIANCE COSTS:

The proposed amendment will have minimal or no effect on costs to local government, as the only additional compliance requirement, discussed

in compliance requirements section, is the preparation of a form containing information already required to be presented by the board of education. Overall, it is expected that any costs will be minimal, and will be absorbed using existing staff and resources. The proposed clarifications in the format of pleadings and memoranda of law as well as filing requirements will reduce the need of parties and staff of Office of State Review (OSR) to spend time clarifying these issues on a case-by-case basis, and overall will result in a reduction of associated costs to both parties and OSR staff.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements on local governments; as all pleadings and memoranda are generated electronically, the requirement that boards of education file electronic copies of such imposes no new burden. Economic feasibility is addressed under the compliance costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearings relating to the provision of special education to students with disabilities by school districts, and is designed to expedite and otherwise clarify the procedures used in proceedings before State Review Officers. The proposed amendment is needed to correct citations and references, provide clarification of the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, and to expedite and otherwise facilitate the processing of requests for review to State Review Officers. It will have no adverse economic impact on local government, as discussed in the Compliance Cost section. The proposed amendment has been drafted to meet Federal and State statutory requirements and Regents policy, while minimizing impact on school districts.

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.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment is applicable to all public school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment imposes no additional recordkeeping requirements, and minimal reporting and other compliance requirements, upon local governments. Section 279.2, as revised, will require a board of education which seeks review of the determination of an impartial hearing officer to serve and file a form containing information the board of education is already required to include in pleadings served on the opposing party and filed with the Office of State Review. The proposed amendment will not increase the level of professional services needed by entities in rural areas to comply with its requirements.

3. COSTS:

The proposed amendment will have minimal or no effect on costs incurred by school districts, including those in rural areas, as the only additional compliance requirement, discussed in the above Reporting, Recordkeeping and Other Compliance Requirements section, is the preparation of a form containing information already required to be presented by the board of education. Overall, it is expected that any costs will be minimal, and will be absorbed using existing staff and resources. The proposed clarifications in the format of pleadings and memoranda of law as well as filing requirements will reduce the need of parties and staff of Office of State Review (OSR) to spend time clarifying these issues on a case-by-case basis, and overall will result in a reduction of associated costs to both parties and OSR staff.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearings relating to the provision of special education to students with disabilities by school districts, and is designed to expedite and clarify the procedures used in proceedings before State Review Officers. The proposed amendment is needed to correct citations and references, provide clarification of the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, and to expedite and otherwise facilitate the processing of requests for review to State Review Officers. The proposed amendment has been carefully drafted to meet Federal and State statutory requirements and Regents policy, while minimizing impact on school districts. Since these proposed requirements must of necessity apply to school districts State-wide, it was not possible to establish different compliance and reporting requirements for school districts located in rural areas, or exempt them from the provisions of the proposed amendment.

5. RURAL AREA PARTICIPATION:

The proposed amendment was submitted for review and comment to the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearings relating to the provision of special education to student with disabilities by school districts and will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the rule that it will not affect job and employment opportunities, no 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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

New York State Seal of Biliteracy

I.D. No. EDU-04-16-00003-P

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

Proposed Action: Addition of section 100.5(h) to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 305(1), (2), 308(not subdivided), 309(not subdivided) and 815(2)(b)

Subject: New York State Seal of Biliteracy.

Purpose: To establish requirements for students to earn a State Seal of Biliteracy.

Text of proposed rule: Subdivision (h) of section 100.5 of the Regulations of the Commissioner of Education is added, effective April 6, 2016, as follows:

(h) New York State Seal of Biliteracy.

(1) Purpose and Intent. The purpose of this subdivision is to establish requirements for earning a New York State (NYS) Seal of Biliteracy pursuant to Education Law § 815. The intent of the NYS Seal of Biliteracy is to encourage the study of languages; certify attainment of biliteracy; provide employers with a method of identifying high school graduates with language and biliteracy skills; provide universities with an additional method to recognize applicants seeking admission; prepare students with twenty-first century skills; recognize the value of foreign and home language instruction in schools; and strengthen intergroup relationships, affirm the value of diversity and honor the multiple cultures and languages of a community. The NYS Seal of Biliteracy shall be awarded by the Commissioner to students who meet the criteria of this subdivision and attend schools in school districts that are approved by the Commissioner pursuant to this subdivision to participate in the program. The NYS Seal of Biliteracy shall be affixed to high school diplomas and transcripts of graduating pupils attaining Seal criteria. No fee shall be charged to a student pursuant to this subdivision.

(2) Definitions. For purposes of this section, "foreign language" means any language other than English (LOTE) including all modern languages, Latin, American Sign Language, Native American languages and native languages.

(3) School district requirements. School district participation in the NYS Seal of Biliteracy program is voluntary. A school district that wishes to participate in the program shall:

(i) form a Seal of Biliteracy Committee (SBC).

(a) The SBC shall include, but is not limited to, the following personnel:

(1) a world language teacher,

(2) an English Language Arts (ELA) teacher,

(3) an English for Speakers of Other Languages (ESOL) teacher,

(4) a guidance counselor, and

(5) an administrator;

(b) The SBC shall:

(1) create a Seal of Biliteracy plan that includes, but is not limited to, details concerning committee recruitment and composition, communications, student advisement, evaluation, and presentation of awards;

(2) create a timeline for all activities pertaining to the Seal of Biliteracy program including, but not limited to communications, a student advisement schedule and dates for important benchmarks throughout the program year;

(3) develop a student application process, including an application form to be completed by interested students and returned to the SBC;

(4) provide for the assignment of an advisor to each student accepted into the program to review program requirements and meet regularly with the student to review the student's progress; and

(5) review and evaluate all coursework, assessments, and other work completed by each student to ensure criteria for the seal are met.

(ii) submit an application to the Commissioner, in a form and by a date prescribed by the Commissioner, for approval for the school district to participate in the program. Such application shall include a narrative that describes how the district will implement the NYS Seal of Biliteracy program, including plans for program communications, processes pertaining to student application, advisement and evaluation, and timelines and benchmarks for the program.

(iii) Participating school districts shall maintain appropriate records in order to identify students who have earned a NYS Seal of Biliteracy. At the end of each school year in which a school district participates in the program, the school district shall submit a report to the Commissioner, in a form and by a date prescribed by the Commissioner, that includes the number of students receiving the Seal along with relevant data including, but not limited to, the types of languages, number of English Language Learner (ELL) students, and the criteria chosen under subparagraphs (ii) and (iii) of paragraph (4) of this subdivision.

(4) Student requirements.

(i) Minimum requirement. Students who wish to receive the NYS Seal of Biliteracy shall complete all requirements for graduating with a Regents diploma (however, students in schools with an alternate pathway for graduation approved by the Commissioner will be held to those schools' criteria);

(ii) Additional requirements. Except as provided in subparagraph (iii) of this paragraph, in addition to the minimum requirement listed in subparagraph (i) of this paragraph students shall earn at least three points in each of the two areas listed below:

(a) Area 1: Criteria for Demonstrating Proficiency in English.

(1) Students shall earn one point per item for achieving the following items:

(i) Score 75 or higher on the NYS Comprehensive English Regents Examination, or score 80 or higher on the NYS Regents Examination in English Language Arts (Common Core) (however, students in schools with an alternate pathway for graduation approved by the Commissioner will be held to those schools' criteria), or English Language Learners (ELLs) score 75 or above on two Regents exams other than English, without translation;

(ii) ELLs score at the Commanding level in two modalities on the New York State English as a Second Language Achievement Test (NYSESLAT);

(iii) complete all 11th and 12th grade ELA courses with an average of 85 or higher, or a comparable score using another scoring system set by the district and approved by the Commissioner; and

(iv) receive a score of 3 or higher on an Advanced Placement English Language or English Literature exam, or receive a total score of 80 or higher on the Test of English as a Foreign Language (TOEFL).

(2) Students shall earn two points for achieving the following item: present a culminating project, scholarly essay or portfolio that meets the criteria for speaking, listening, reading, and writing established by the school district's SBC to a panel of reviewers with proficiency in English.

(b) Area 2: Criteria for Demonstrating Proficiency in a World Language.

(1) Students shall earn one point per item for achieving the following items:

(i) complete a level four Checkpoint C World Language course, with a grade of 85 or higher, or a comparable score using another scoring system set by the district and approved by the Commissioner, for both the coursework and final examination consistent with Checkpoint C Learning Standards;

(ii) for students enrolled in a bilingual education program, complete all required Home Language Arts (HLA) coursework and the district HLA exam with an 85 or higher, or a comparable score using another scoring system set by the district and approved by the Commissioner;

(iii) score at a proficient level on one or one group, as applicable, of the following accredited Checkpoint C World Language assessments:

AP – Advanced Placement Examination (minimum score 4)

IB – International Baccalaureate (minimum score 5)

STAMP4S – Standard Based Measurement of Proficiency (minimum score 6)

DELE – Diplomas of Spanish as a Foreign Language through Cervantes Institute of NYC Spanish (minimum score B1)

AAPPL – The ACTFL Assessment of Performance toward Proficiency in Languages (minimum score I-5)

OPI – The ACTFL Oral Proficiency Interview (minimum score Intermediate High)

OPIc – The ACTFL Oral Proficiency Computer Test (minimum score Intermediate High)

WPT/BWT – The ACTFL Writing Proficiency Test/Business Writing Test (minimum score Intermediate High)

RTP – The ACTFL Reading Proficiency Test (minimum score Intermediate High)

LPT – The ACTFL Listening Proficiency Test (minimum score Intermediate High)

ALIRA – The ACTFL Latin Interpretive Reading Assessment (minimum score I-4)

SLPI: ASL – American Sign Language Proficiency Interview (minimum score intermediate plus); and

(iv) provide transcripts from a school in a foreign country showing at least three years of instruction in the student's home/native language in Grade 6 or beyond, with equivalent grade average of B or higher.

(2) Students shall earn two points for achieving this item: present a culminating project, scholarly essay, or portfolio that meets the criteria for speaking, listening, reading, and writing established by the district's SBC and that is aligned to the NYS Checkpoint C Learning Standards to a panel selected by the SBC consisting of at least one SBC member and at least two reviewers who are proficient in the target language.

(iii) Unique Requirements for Specific Languages: Special allowances may be necessary to accommodate the unique characteristics of certain languages. In cases where language assessments across all three modes of communication (interpersonal, interpretive and presentational) may not be appropriate or available, school districts may substitute a different assessment that meets the intent of the NYS Seal of Biliteracy. Students seeking the Seal through languages not characterized by the use of listening, speaking, reading, or for which there is not a writing system, shall demonstrate the expected level of proficiency on an assessment of the modalities that characterize communication in that language, consistent with the recommendations in the "Guidelines for Implementing the Seal of Biliteracy" of the American Council on the Teaching of Foreign Languages (ACTFL), the National Association for Bilingual Education (NABE), the National Council of State Supervisors for Languages (NCSSFL) and TESOL International Association.

(a) Latin and Classical Greek: The NYS Seal of Biliteracy shall be earned by assessment of interpretive reading and presentational writing, not of listening or interpersonal face-to-face communication.

(b) American Sign Language (ASL): The NYS Seal of Biliteracy shall be earned by assessment of interpersonal signed exchange, presentational signing, and demonstrating understanding of ASL (such as interpreting a signed lecture or by summarizing and responding to questions aimed at overarching understanding).

(c) Native American Languages: The NYS Seal of Biliteracy shall be earned by assessment of interpersonal face-to-face communication as well as interpretive listening and presentational speaking, and writing and reading where a written code exists.

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@nysed.gov

Data, views or arguments may be submitted to: Angelica Infante-Green, Deputy Commissioner for P-12 Instructional Support, State Education Building 2M West, 89 Washington Avenue, Albany, NY 12234, (518) 474-5520, email: NYSEDP12@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 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 Board of Regents and the Commissioner to adopt rules and regulations to carry out laws of the State regarding education and the functions and duties conferred on the Department by law.

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

Education Law section 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 Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and shall execute all educational policies determined by the Board of Regents.

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 815 establishes the New York State Seal of Biliteracy program to recognize high school graduates who have attained a ''high level of proficiency in listening, speaking, reading, and writing in one or more languages, in addition to English.'' Subdivision (2)(b) of section 815 directs the Board of Regents to promulgate regulations as may be necessary to establish the criteria that students must achieve to earn a State Seal of Biliteracy.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the authority conferred by the above statutes and is necessary to implement Education Law section 815 by establishing requirements for the State Seal of Biliteracy to recognize high school graduates who have attained a high level of proficiency in listening, speaking, reading, and writing in one or more languages, in addition to English.

3. NEEDS AND BENEFITS:

The proposed rule is necessary to implement Education Law section 815, as added by Chapter 271 of the Laws of 2012, by establishing requirements for the State Seal of Biliteracy to recognize high school graduates who have attained a high level of proficiency in listening, speaking, reading, and writing in one or more languages, in addition to English. The intent of the NYS Seal of Biliteracy is to encourage the study of languages, identify high school graduates with language and biliteracy skills for employers, provide universities with additional information about applicants seeking admission, prepare students with twenty-first century skills, recognize the value of foreign and native language instruction in schools, and affirm the value of diversity in a multilingual society. These goals are consistent with the Regents Reform Agenda of ensuring that all NYS students graduate college- and career-ready.

In January 2014, the Board of Regents approved a Seal of Biliteracy pilot program for implementation by the New York State Education Department (NYSED) in the 2014-15 school year. The Seal of Biliteracy pilot program afforded districts an opportunity to develop innovative ways of measuring and creating an approved path to attaining the Seal of Biliteracy, inform statewide policy development, and share best practices. NYSED selected six districts and 20 individual schools to participate in the pilot. As a result of the yearlong pilot, NYSED set the target level of proficiency to attain the Seal of Biliteracy at Intermediate High, based on the American Council on the Teaching of Foreign Languages (ACTFL) scale. NYSED also recommended that students have the flexibility to demonstrate proficiency in English and another language using a variety of methods including formal, nationally recognized assessments, coursework, projects, essays, portfolios, and prior coursework completed in a foreign country.

A school district interested in implementing a Seal of Biliteracy program must notify NYSED in writing through an application process. The goal of this application process is to encourage planning, responsibility and accountability, as well as give districts a planning structure and allow NYSED to provide assistance when needed. The NYS Seal of Biliteracy will be awarded by the Commissioner to students who meet the criteria established in the proposed rule and who attend schools in districts that voluntarily agree to participate in the program. The Seal of Biliteracy will be affixed to high school diplomas and transcripts of graduating pupils attaining Seal criteria and must be made available to students at no cost.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: the proposed rule is necessary to implement Education Law section 815, relating to the State Seal of Biliteracy, and does not impose any direct costs on school districts. School district participation in the NYS Seal of Biliteracy program is voluntary. For those school districts that choose to participate there may be costs associated with the creation and operation of Seal of Biliteracy Committees and the preparation of applications and reports, however the proposed rule will not impose significant costs on participating school districts. The formation of a Seal of Biliteracy Committee, with a minimum of four staff members, may be structured as voluntary membership with no associated costs. Costs of communicating the program to the public, which may include brochures, presentations and letters to the public, would range from $0 to $50 per year. In the long term, the proposed rule is expected to foster the graduation of more students with advanced English and world language skills that can 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.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule implements Education Law section 815, relating to the NYS State Seal of Biliteracy, and does not impose any additional program, service, duty or responsibility upon local governments. School district participation in the NYS Seal of Biliteracy program is voluntary. School districts that choose to participate in the NYS Seal of Biliteracy program must form a Seal of Biliteracy Committee, to: (i) create a Seal of Biliteracy plan that includes, but is not limited to, details concerning committee recruitment and composition, communications, student advisement, evaluation, and presentation of awards; (ii) create a timeline for all activities pertaining to the Seal of Biliteracy program including, but not limited to communications, a student advisement schedule and dates for important benchmarks throughout the program year; (d) develop a student application process, including an application form to be completed by interested students and returned to the SBC; and (f) review and evaluate all coursework, assessments, and other work completed by each student to ensure criteria for the seal are met.

6. PAPERWORK:

School districts must submit an application to the Commissioner, in a form and by a date prescribed by the Commissioner, for approval for the school district to participate in the program. Participating school districts must maintain appropriate records in order to identify students who have earned a NYS Seal of Biliteracy. At the end of each school year in which a school district participates in the program, the school district shall submit a report to the Commissioner, in a form and by a date prescribed by the Commissioner, that includes the number of students receiving the Seal along with relevant data including, but not limited to, the types of languages, number of English Language Learner (ELL) students, and the criteria chosen under section 100.5(h)(4)(ii) and (iii).

7. DUPLICATION:

The proposed rule is necessary to implement Education Law section 815 by establishing requirements for the State Seal of Biliteracy and does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

The proposed rule is necessary to implement Education Law section 815 by establishing requirements for the State Seal of Biliteracy. There are no significant alternatives to the proposed rule and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards in this area.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date. School districts may choose or decline to participate in the NYS Seal of Biliteracy program.

Regulatory Flexibility Analysis

Small Businesses:

The proposed rule is necessary to implement Education Law section 815 by establishing requirements for a State Seal of Biliteracy to recognize high school graduates who have attained a high level of proficiency in listening, speaking, reading, and writing in one or more languages, in addition to English. The proposed rule 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 proposed rule 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 rule applies to those school districts among the 689 public school districts in the State who choose to participate in the NYS Seal of Biliteracy program.

2. COMPLIANCE REQUIREMENTS:

The proposed rule is necessary to implement Education Law section 815 by establishing requirements for the State Seal of Biliteracy to recognize high school graduates who have attained a high level of proficiency

in listening, speaking, reading, and writing in one or more languages, in addition to English. The proposed rule does not directly impose any additional compliance requirements on school districts. School district participation in the NYS Seal of Biliteracy program is voluntary. School districts that choose to participate in the NYS Seal of Biliteracy program must submit an application to the Commissioner, in a form and by a date prescribed by the Commissioner, for approval for the school district to participate in the program. Participating school districts must form a Seal of Biliteracy Committee, to: (i) create a Seal of Biliteracy plan that includes, but is not limited to, details concerning committee recruitment and composition, communications, student advisement, evaluation, and presentation of awards; (ii) create a timeline for all activities pertaining to the Seal of Biliteracy program including, but not limited to communications, a student advisement schedule and dates for important benchmarks throughout the program year; (d) develop a student application process, including an application form to be completed by interested students and returned to the SBC; and (f) review and evaluate all coursework, assessments, and other work completed by each student to ensure criteria for the seal are met.

Participating school districts must also maintain appropriate records in order to identify students who have earned a NYS Seal of Biliteracy. At the end of each school year in which a school district participates in the program, the school district shall submit a report to the Commissioner, in a form and by a date prescribed by the Commissioner, that includes the number of students receiving the Seal along with relevant data including, but not limited to, the types of languages, number of English Language Learner (ELL) students, and the criteria chosen under section 100.5(h)(4)(ii) and (iii).

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed rule is necessary to implement Education Law section 815, relating to the State Seal of Biliteracy, and does not impose any direct costs on school districts. School district participation in the NYS Seal of Biliteracy program is voluntary. For those school districts that choose to participate there may be costs associated with the creation and operation of Seal of Biliteracy Committees and the preparation of applications and reports, however the proposed rule will not impose significant costs on school districts. The formation of a Seal of Biliteracy Committee, with a minimum of four staff members, may be structured as voluntary membership with no associated costs. Costs of communicating the program to the public, which may include brochures, presentations and letters to the public, would range from $0 to $50 per year. In the long term, the proposed rule is expected to foster the graduation of more students with advanced English and world language skills that can stimulate workforce productivity and economic performance in local communities.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule 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 rule is necessary to implement Education Law section 815 by establishing requirements for the State Seal of Biliteracy to recognize high school graduates who have attained a high level of proficiency in listening, speaking, reading, and writing in one or more languages, in addition to English. The proposed rule does not directly impose any additional compliance requirements on school districts. School district participation in the NYS Seal of Biliteracy program is voluntary.

7. LOCAL GOVERNMENT PARTICIPATION:

In January 2014, the Board of Regents approved a Seal of Biliteracy pilot program for implementation by the New York State Education Department (NYSED) in the 2014-15 school year. The Seal of Biliteracy pilot program afforded districts an opportunity to develop innovative ways of measuring and creating an approved path to attaining the Seal of Biliteracy, inform statewide policy development, and share best practices. NYSED selected six districts and 20 individual schools to participate in the pilot. As a result of the yearlong pilot, NYSED set the target level of proficiency to attain the Seal of Biliteracy at Intermediate High, based on the American Council on the Teaching of Foreign Languages (ACTFL) scale. NYSED also recommended that students have the flexibility to demonstrate proficiency in English and another language using a variety of methods including formal, nationally recognized assessments, coursework, projects, essays, portfolios, and prior coursework completed in a foreign country.

In addition, 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.

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 rule is necessary to implement statutory requirements in Education Law § 815 and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule 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.

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

The proposed rule is necessary to implement Education Law section 815 by establishing requirements for the State Seal of Biliteracy to recognize high school graduates who have attained a high level of proficiency in listening, speaking, reading, and writing in one or more languages, in addition to English. The proposed rule does not directly impose any additional compliance requirements on school districts. School district participation in the NYS Seal of Biliteracy program is voluntary. School districts that choose to participate in the NYS Seal of Biliteracy program must submit an application to the Commissioner, in a form and by a date prescribed by the Commissioner, for approval for the school district to participate in the program.

Participating school districts must form a Seal of Biliteracy Committee, to: (i) create a Seal of Biliteracy plan that includes, but is not limited to, details concerning committee recruitment and composition, communications, student advisement, evaluation, and presentation of awards; (ii) create a timeline for all activities pertaining to the Seal of Biliteracy program including, but not limited to communications, a student advisement schedule and dates for important benchmarks throughout the program year; (d) develop a student application process, including an application form to be completed by interested students and returned to the SBC; and (f) review and evaluate all coursework, assessments, and other work completed by each student to ensure criteria for the seal are met.

Participating school districts must also maintain appropriate records in order to identify students who have earned a NYS Seal of Biliteracy. At the end of each school year in which a school district participates in the program, the school district shall submit a report to the Commissioner, in a form and by a date prescribed by the Commissioner, that includes the number of students receiving the Seal along with relevant data including, but not limited to, the types of languages, number of English Language Learner (ELL) students, and the criteria chosen under section 100.5(h)(4)(ii) and (iii).

3. COMPLIANCE COSTS:

The proposed rule is necessary to implement Education Law section 815, relating to the State Seal of Biliteracy, and does not impose any direct costs on school districts in rural areas. School district participation in the NYS Seal of Biliteracy program is voluntary. For those school districts that choose to participate there may be costs associated with the creation and operation of Seal of Biliteracy Committees and the preparation of applications and reports, however the proposed rule will not impose significant costs on rural school districts. The formation of a Seal of Biliteracy Committee, with a minimum of four staff members, may be structured as voluntary with no associated costs. Costs of communicating the program to the public, which may include brochures, presentations and letters to the public, would range from $0 to $50 per year. In the long term, the proposed rule is expected to foster the graduation of more students with advanced English and world language skills that can stimulate workforce productivity and economic performance in local communities.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Education Law section 815 by establishing requirements for the State Seal of Biliteracy to recognize high school graduates who have attained a high level of proficiency in listening, speaking, reading, and writing in one or more languages, in addition to English. The proposed rule does not directly impose any additional compliance requirements on school districts. School district participation in the NYS Seal of Biliteracy program is voluntary. Because the statutory requirements in Education Law § 815 upon which the regulation is based apply to all school districts and BOCES in the State, 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 rule.

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 rule is necessary to implement statutory requirements in Education Law § 815 and therefore the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed rule is necessary to implement Education Law section 815 by establishing requirements for a State Seal of Biliteracy to recognize high school graduates who have attained a high level of proficiency in listening, speaking, reading, and writing in one or more languages, in addition to English. The proposed rule 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 proposed rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Sanitary Condition of Shellfish Lands

I.D. No. ENV-44-15-00001-E

Filing No. 68

Filing Date: 2016-01-12

Effective Date: 2016-01-12

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

Action taken: Amendment of Part 41 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0307 and 13-0319

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: This rule making is necessary to protect the public health. DEC previously filed a Notice of Emergency Adoption and Proposed Rule Making on October 14, 2015 to designate certain shellfish growing areas as uncertified (closed) for the harvest of shellfish. These shellfish areas did not meet the bacteriological criteria for a certified (open) shellfish growing area; the emergency rule closed them for 90 days. The emergency rule will expire on January 11, 2016. The Notice of Adoption for the rule will not be published or in effect before the original emergency adoption expires. This current emergency rule making is necessary to keep the newly adopted shellfish closures in effect and prevent the harvest and subsequent consumption of shellfish from areas that do not meet the criteria for a certified area for shellfish harvest. Environmental Conservation Law section 13-0307 requires that DEC examines shellfish areas and certifies those that are in such sanitary condition that shellfish may be taken therefrom and used as food; all other areas must be designated as uncertified. Shellfish harvested from areas that do not meet the bacteriological standards for certified shellfish lands have an increased potential to cause illness in shellfish consumers.

Shellfish are filter feeders that consume plankton, other minute organisms, and particulate matter found in the water column. They are capable of accumulating pathogenic bacteria, viruses and toxic substances within their bodies. Consequently, shellfish harvested from areas that do not meet the bacteriological standards for certification have an increased potential to cause illness in shellfish consumers. Closures of shellfish lands that do not meet the water quality standards provide essential protection of public health. Some shellfish growing areas (SGA) will require being reclassified as seasonally uncertified. These areas are open during a portion of the year when water quality meets the criteria for certified classification. The seasonally open dates can vary between SGA because sample collection in each area is randomly selected and water quality results will determine when and if areas meet certified criteria for shellfish harvest. Water quality samples that meet criteria during a portion of the year (typically the colder months of the year) determine the seasonally uncertified open dates.

The 2015 evaluations of certain shellfish growing areas determined that portions of the following areas no longer meet the water quality criteria for a certified area: Mount Sinai Harbor, 200 acres (Town of Brookhaven); a portion of Long Island Sound, 72 acres (Towns of Brookhaven and Riverhead); Great Peconic Bay, 65 acres (Towns of Southold and Riverhead); Patchogue Bay, 1,028 acres (Towns of Brookhaven and Islip); Cold Spring Harbor, 99 acres (Towns of Huntington and Oyster Bay); Stony Brook Harbor, 300 acres (Towns of Brookhaven and Smithtown); Shinnecock Bay, 60 acres (Town of Southampton); and Acabonac Harbor, 20 acres (Town of East Hampton). These affected areas were closed October 14, 2015 by the original Notice of Emergency Adoption and Proposed Rule Making.

This emergency rule making is needed to maintain the current closures until the Notice of Adoption is published and in effect, prevent the harvest of shellfish from areas that fail to meet the water quality criteria for a certified area, and protect public health.

Subject: Sanitary Condition of Shellfish Lands.

Purpose: To reclassify shellfish lands to prohibit the harvest of shellfish.

Text of emergency rule: 6 NYCRR Part 41 is amended to read as follows:

Clause 41.2(b)(4)(vii)('a') is amended to read as follows:

('a') *During the period January 1 through December 31, both dates inclusive,* [All] *all* that area including tributaries south and east of a line extending southerly from the seaward end of the dock serving the Cold Spring Harbor Beach Club (local landmark) to the western extremity of the white house *(known as the Gale House)* located on the shoreline immediately west of Cold Spring Beach (local landmark)*, on the campus of Cold Spring Harbor Laboratory*.

Clause 41.2(b)(4)(vii)('b') is renumbered 41.2(b)(4)(vii)('c').

New clause 41.2(b)(4)(vii)('b') is adopted to read as follows:

('b') During the period May 1 through October 15, both dates inclusive, all that area including tributaries south and east of a line extending westerly from the seaward end of the dock serving the Cold Spring Harbor Beach Club (local landmark) to the flag pole situated near the village hall of the Village of Laurel Hollow, 1492 Laurel Hollow Road (local landmark).

Clause 41.3(b)(2)(ii)('b') is amended to read as follows:

('b') During the period [May 1st through December 14th] *May 1 through September 30*, both dates inclusive, all that area of Great South Bay, Patchogue Bay and tributaries [within 500 yards in any direction from the foot of Dunton Avenue, West Bellport.] *lying north of a line extending westerly from the southernmost tip of land at Howells Point (local landmark) to the southernmost tip of the fixed dock at the entrance to the boat basin at Sayville Yacht Club (local landmark).*

Clause 41.3(b)(3)(ii)('b') is amended to read as follows:

('b') During the period [May 1st through December 14th] *May 1 through September 30*, both dates inclusive, all that area of Great South Bay, Patchogue Bay and tributaries [within 500 yards in any direction from the foot of Dunton Avenue, West Bellport.] *lying north of a line extending westerly from the southernmost tip of land at Howells Point (local landmark) to the southernmost tip of the fixed dock at the entrance to the boat basin at Sayville Yacht Club (local landmark).*

Clause 41.3(b)(4)(iii)('h') is amended to read as follows:

('h') During the period May 1[st] through November 30[th] (both dates inclusive) all that area, including tributaries of Heady Creek, lying north of a line extending [easterly] *due west* from the [northeast corner of the peaked roof of the beige Shinnecock Indian Reservation, old hatchery building, to a red brick chimney of a two-story residence at 509 Captains Neck Lane, known locally as "Colonnades," on the opposite shoreline (said residence is a two-story structure with natural wood shingled siding and a natural wood shingled roof) (1993).] *southernmost tip of land on the eastern side of Heady Creek directly across to the opposite shoreline.*

Clause 41.3(b)(5)(x)('a') is repealed:

New clause 41.3(b)(5)(x)('a') is adopted to read as follows:

('a') All that area of East Harbor (located in the southernmost portion of Acabonac Harbor) lying south of a line extending northwesterly from the southernmost point of the southernmost bulkhead located on the property at 73 Louse Point Road, to an orange marker on the opposite western shoreline.

Clauses 41.3(b)(5)(x)('c') and ('d') are renumbered ('d') and ('e').

New clause 41.3(b)(5)(x)('c') is adopted to read as follows:

('c') All that area of Acabonac Harbor, Pussy's Pond and an unnamed cove, including tributaries, lying west of a line heading north from an orange marker on the southern shore to an orange marker on the opposite northern shoreline. Said unnamed cove lies southerly of the Merrill Lake Sanctuary and northerly of Harbor Lane and Shipyard Lane (local landmarks in Springs).

Clause 41.3(b)(7)(xi)('a') is amended to read as follows:

('a') All that area of Brushs Creek, including tributaries and the entrance canal, and all that area of Great Peconic Bay within a [300] *1,000*-yard radius of the southwesternmost corner of the bulkheading protecting the northern shoreline of the entrance to Brushs Creek.

New clause 41.3(b)(8)(iii)('b') is adopted to read as follows:

('b') All that area of Brushs Creek, including tributaries and the entrance canal, and all that area of Great Peconic Bay within a 1,000-yard radius of the southwesternmost corner of the bulkheading protecting the northern shoreline of the entrance to Brushs Creek.

Subparagraph 41.3(b)(8)('iv') is amended to read as follows:

('iv') All that area of Long Island Sound within [a 500-yard radius of the northernmost point of the rock jetty (local landmark) located at the mouth of Wading River Creek.] *500 yards of the shoreline, beginning at a point 200 yards west of the westernmost point of the west jetty at the Shoreham Canal to the westernmost point of the paved parking lot at Wading River Beach located on Creek Road (Hamlet of Wading River).*

Subparagraph 41.3(b)(9)(iii) is amended to read as follows:

(iii) [Mt.] *Mount* Sinai Harbor.

Clauses 41.3(b)(9)(iii)('a') through ('d') are repealed.

New clauses 41.3(b)(9)(iii)('a') and ('b') are adopted to read as follows:

('a') During the period May 1 through October 31, both dates inclusive, all that area of Mount Sinai Harbor, including tributaries, lying southerly of a line extending easterly from the northernmost point of the west jetty at the harbor entrance to the northernmost point of the east jetty at the harbor entrance.

('b') During the period January 1 through December 31, both dates inclusive, all that area of Mount Sinai Harbor, including tributaries lying south of a line extending westerly from the northernmost point of the bulkhead at the Town of Brookhaven access point known locally as Satterly Landing (located on the northern side of Shore Road and west of the residence at 182 Shore Road, local landmarks) to the northernmost end of the small white building known locally as "Adee's Boathouse" (local landmark), located on the opposite western shoreline.

Clause 41.3(b)(9)(iv)('e') is amended to read as follows:

('e') During the period [May 15th through October 31st] *May 1 through December 31*, both dates inclusive, all that area of Stony Brook Harbor and tributaries lying south of a line extending southeasterly from the southernmost red brick chimney on the Knox School located at 541 Long Beach Road in the incorporated Village of Nissequogue (said school is a three-story red brick building, local landmark) to the southernmost chimney on the residence at 121 Harbor Road in the incorporated Village of Head of the Harbor (said residence is a white three-story structure with dark shutters and three chimneys and is located on the Thatch Meadow Farm property, local landmark).

Clause 41.3(b)(9)('vi') is amended to read as follows:

('vi') All that area of Long Island Sound within [a 500-yard radius of the northernmost point of the rock jetty (local landmark) located at the mouth of Wading River Creek.] *500 yards of the shoreline, beginning at a point 200 yards west of the westernmost point of the west jetty at the Shoreham Canal to the westernmost point of the paved parking lot at Wading River Beach located on Creek Road (Hamlet of Wading River).*

Clause 41.3(b)(10)(ii)('d') is amended to read as follows:

('d') During the period [May 15th through October 31st] *May 1 through December 31*, both dates inclusive, all that area of Stony Brook Harbor and tributaries lying south of a line extending southeasterly from the southernmost red brick chimney on the Knox School located at 541 Long Beach Road in the incorporated Village of Nissequogue (said school is a three-story red brick building, local landmark) to the southernmost chimney on the residence at 121 Harbor Road in the incorporated Village of Head of the Harbor (said residence is a white three-story structure with dark shutters and three chimneys and is located on the Thatch Meadow Farm property, local landmark).

Existing clause 41.3(b)(11)(iv)('a') is amended to read as follows:

('a') *During the period January 1 through December 31, both dates inclusive,* [All] *all* that area including tributaries south and east of a line extending southerly from the seaward end of the dock serving the Cold Spring Harbor Beach Club (local landmark) to the western extremity of the white house *(known as the Gale House)* located on the shoreline immediately west of Cold Spring Beach (local landmark)*, on the campus of Cold Spring Harbor Laboratory*.

Clause 41.3(b)(11)(iv)('b') is renumbered to 41.3(b)(11)(iv)('c').

New clause 41.3(b)(11)(iv)('b') is adopted to read as follows:

('b') During the period May 1 through October 15, both dates inclusive, all that area including tributaries south and east of a line extending westerly from the seaward end of the dock serving the Cold Spring Harbor Beach Club (local landmark) to the flag pole situated near the village hall of the Village of Laurel Hollow, 1492 Laurel Hollow Road (local landmark).

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. ENV-44-15-00001-EP, Issue of November 4, 2015. The emergency rule will expire March 11, 2016.

Text of rule and any required statements and analyses may be obtained from: Matt Richards, New York State Department of Environmental Conservation, 205 Belle Meade Rd., Suite 1, East Setauket, NY 11733, (631) 444-0491, email: matt.richards@dec.ny.gov

Additional matter required by statute: The action is subject to SEQR as an Unlisted action and a Short EAF was completed. The Department has determined that an EIS need not be prepared and has issued a negative declaration. The EAF and negative declaration are available upon request.

Consolidated Regulatory Impact Statement

1. Statutory authority:

The statutory authority for designating shellfish lands as certified or uncertified is given in Environmental Conservation Law (ECL) section 13 0307. Subdivision 1 of section 13 0307 of the ECL requires the Department of Environmental Conservation (the department) to periodically conduct examinations of all shellfish lands within the marine district to ascertain the sanitary condition of these areas. Subdivision 2 of this section requires the department to certify which shellfish lands are in such sanitary condition that shellfish may be taken for food. Such lands are designated as certified shellfish lands. All other shellfish lands are designated as uncertified. The statutory authority for promulgating regulations with respect to the harvest of shellfish is given in ECL section 13 0319.

2. Legislative objectives:

There are two purposes of the legislation: to ensure that shellfish lands are appropriately classified as either certified or uncertified and to protect public health by preventing the harvest and consumption of shellfish from lands that do not meet the standards for a certified shellfish land. This legislation requires the department to examine shellfish lands and determine which shellfish lands meet the sanitary criteria for a certified shellfish land, as set forth in Part 47 of Title 6 NYCRR, promulgated pursuant to section 13 0319 of the ECL. Shellfish lands which meet these criteria must be designated as certified. Shellfish lands which do not meet criteria must be designated as uncertified to prevent the harvest of shellfish from those lands.

3. Needs and benefits:

Regulations that designate shellfish lands as certified are needed to allow the harvest of shellfish from lands that meet the sanitary criteria for a certified area. Shellfish are a valuable state resource and, where possible, should be available for commercial and recreational harvest. The classification of previously uncertified shellfish lands as certified may provide additional sources of income for commercial shellfish diggers by increasing the amount of areas available for harvest. Recreational harvesters also benefit by having increased harvest opportunities and the ability to make use of a natural resource readily available to the public. The direct harvest of shellfish for use as food is allowed from certified shellfish lands only.

To protect public health and to comply with ECL 13-0307, the Bureau of Marine Resources' Shellfish Sanitation Program conducts and maintains sanitary surveys of shellfish growing areas (SGA) in the marine district in New York State. Maintenance of these surveys includes the regular collection and bacteriological examination of water samples to monitor the sanitary condition of SGAs. Triennial water quality evaluation reports written in 2015 are prepared by the staff of the Shellfish Sanitation Program for each SGA. These reports present the results of statistical analyses of water quality data comprised of a minimum of 30 water quality data points. The years involved can vary based on the number of samples collected for each year, for each growing area.

The report summary may state that all or portions of an SGA should be designated as uncertified for the harvest of shellfish or that all, or portions of an SGA should be designated as certified or seasonally uncertified for the harvest of shellfish based on criteria in 6 NYCRR Part 47.

Regulations that designate shellfish lands as uncertified are needed to prevent the harvest and consumption of shellfish from lands that do not

meet the sanitary criteria for a certified area. Shellfish harvested from uncertified shellfish lands have a greater potential to cause human illness due to the possible presence of pathogenic bacteria or viruses. These pathogens may cause the transmission of infectious disease to the shellfish consumer.

These regulations also protect the shellfish industry. Seafood wholesalers, retailers, and restaurants are adversely affected by public reaction to instances of shellfish related illness. By prohibiting the harvest of shellfish from lands that fail to meet the sanitary criteria, these regulations can ensure that only wholesome shellfish are allowed to be sold to the shellfish consumer.

4. Costs:

There will be no costs to State or local governments. No direct costs will be incurred by regulated commercial shellfish harvesters in the form of initial capital investment or initial non capital expenses, in order to comply with these proposed regulations. The department cannot provide an estimate of potential lost income to shellfish harvesters when areas are classified as uncertified, due to a number of variables that are associated with commercial shellfish harvesting; nor can the potential benefits be estimated when areas are reopened. Those variables are listed in the following three paragraphs.

As of August 5, 2015, the department had issued 1,649 New York State shellfish digger's permits for the year 2015. However, the actual number of those individuals who harvest shellfish commercially full time is not known. Recreational harvesters who wish to harvest more than the daily recreational limit of 100 hard clams, with no intent to sell their catch, can only do so by purchasing a New York State digger's permit. The number of individuals who hold shellfish digger's permits for that type of recreational harvest is unknown. The department's records do not differentiate between full time and part-time commercial or recreational shellfish harvesters.

The number of harvesters working in a particular area cannot be estimated for the reason stated above. In addition, the number of harvesters in a particular area is dependent upon the season, the amount of shellfish resource in the area, the price of shellfish and other economic factors, unrelated to the department's proposed regulatory action. When a particular area is classified as uncertified (closed to shellfish harvesting), harvesters can shift their efforts to other certified areas.

Estimates of the existing shellfish resource in a particular embayment are not known. Recent shellfish population assessments have not been conducted by the department. Without this information, the department cannot determine the effect a closure or reopening would have on the existing shellfish resource.

The department's actions to classify areas as certified or uncertified are not dependent on the shellfish resources in a particular area. They are based solely on the results of water quality analyses, the need to protect public health, and statutory requirements.

There is no cost to the department. Sampling requirements will likely be reduced when an area is reclassified from certified or seasonally uncertified to seasonally uncertified or uncertified year-round. Administration and enforcement of the proposed amendment are covered by existing programs.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

No new paperwork is required.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

There are no acceptable alternatives. ECL section 13 0307 stipulates that when the department has determined that a shellfish land meets the sanitary criteria for certified shellfish lands, the department must designate the land as certified and open to shellfish harvesting. All other shellfish lands must be designated as uncertified and closed to shellfish harvesting. These actions are necessary to protect public health. Failure to comply with the National Shellfish Sanitation Program (NSSP) guidelines could result in a ban on New York State shellfish in interstate commerce and would cause undue hardship to the commercial harvesting industry.

9. Federal standards:

There are no federal standards regarding the certification of shellfish lands. New York and other shellfish producing and shipping states participate in the National Shellfish Sanitation Program (NSSP) which provides guidelines intended to promote uniformity in shellfish sanitation standards among members. The NSSP is a cooperative program consisting of the federal government, states and the shellfish industry. Participation in the NSSP is voluntary, but participating states agree to follow NSSP water quality standards. Each state adopts its own regulations to implement a shellfish sanitation program consistent with the NSSP. The U.S. Food and Drug Administration (FDA) evaluates state programs and standards relative to NSSP guidelines. Substantial non conformity with NSSP guidelines can result in sanctions being taken by FDA, including removal of a state's shellfish shippers from the Interstate Certified Shellfish Shippers List. This would effectively bar a non conforming state's shellfish products from interstate commerce.

10. Compliance schedule:

Compliance with any new regulations designating areas as certified or uncertified does not require additional capital expense, paperwork, recordkeeping or any action by the regulated parties. Immediate compliance with any regulation designating shellfish lands as uncertified is necessary to protect public health. Shellfish harvesters are notified of changes in the classification of shellfish lands by mail either prior to, or concurrent with, the adoption of new regulations. Therefore, immediate compliance can be readily achieved.

Consolidated Regulatory Flexibility Analysis

1. Effect on small business and local government:

As of August 5, 2015 there were 1,649 licensed shellfish diggers in New York State for the year 2015. The numbers of permits issued for areas in the State are as follows: Town of Babylon, 49; Town of Brookhaven, 285; Town of East Hampton, 239; Town of Hempstead, 107; Town of Huntington, 150; Town of Islip, 128; Town of North Hempstead, 4; Town of Oyster Bay, 111; Town of Riverhead, 60; Town of Shelter Island, 33; Town of Smithtown, 158; Town of Southampton, 158; Town of Southold, 227; New York City, 44; Westchester, 3; other, 16.

Any change in the designation of shellfish lands may have an effect on shellfish diggers. Each time shellfish lands or portions of shellfish lands are designated as uncertified, there may be some loss of income for shellfish diggers who are harvesting shellfish from the lands to be closed. This loss may be determined by the acreage to be closed, the type of closure (whether year-round or seasonal), the species of shellfish present in the area, the area's productivity, and the market value of the shellfish resource in the particular area.

When uncertified shellfish lands are found to meet the sanitary criteria for a certified shellfish land, and are then designated as certified, there is also an effect on shellfish diggers. More shellfish lands are made available for the harvest of shellfish, and there is a potential for an increase in income for shellfish diggers. Again, the effect of the re opening of a harvesting area is determined by the shellfish species present, the area's productivity, and the market value of the shellfish resource in the area.

Local governments on Long Island exercise management authority and share law enforcement responsibility for shellfish with the State and the counties of Nassau and Suffolk. These include the towns of Hempstead, North Hempstead and Oyster Bay in Nassau County and the towns of Babylon, Islip, Brookhaven, Southampton, East Hampton, Southold, Shelter Island, Riverhead, Smithtown and Huntington in Suffolk County. Changes in the classification of shellfish lands impose no additional requirements on local governments above what level of management and enforcement that they normally undertake; therefore, there should be no effect on local governments.

2. Compliance requirements:

There are no reporting or recordkeeping requirements for small businesses or local governments.

3. Professional services:

Small businesses and local governments will not require any professional services to comply with proposed rules.

4. Compliance costs:

There are no capital costs which will be incurred by small businesses or local governments.

5. Economic and technological feasibility:

There are no reporting, recordkeeping, or affirmative actions that small businesses or local governments must undertake to comply with the proposed rules. Similarly, small businesses and local governments will not have to retain any professional services or incur any capital costs to comply with such rules. As a result, it should be economically and technically feasible for small businesses and local governments to comply with rules of this type.

6. Minimizing adverse impact:

The designation of shellfish lands as uncertified may have an adverse impact on commercial shellfish diggers. All diggers in the towns affected by proposed closures will be notified by mail of the designation of shellfish lands as uncertified prior to the date the closures go into effect. Shellfish lands which fail to meet the sanitary criteria during specified times of the year will be designated as uncertified only during those times. At other times, shellfish may be harvested from those lands (seasonally certified). To further minimize any adverse effects of proposed closures, towns may request that uncertified shellfish lands be considered for conditionally certified designation or for a shellfish transplant project. Shellfish diggers will also be able to shift harvesting effort to nearby certified shellfish lands. There should be no significant adverse impact on local governments from most changes in the classification of shellfish lands.

7. Small business and local government participation:

Impending shellfish closures are discussed at regularly scheduled Shellfish Advisory Committee meetings. This committee, organized by the department, is comprised of representatives of local baymen's associations, shellfish shippers and local town officials. Through their representatives, shellfish harvesters and shippers can express their opinions and give recommendations to the department concerning shellfish land classification. Local governments, state legislators, and baymen's organizations are notified by mail and given the opportunity to comment on any proposed rulemaking prior to filing the Notice of Adoption with the Department of State.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact that could have on the health of shellfish consumers. Immediate compliance is required to ensure the general welfare of the public is protected.

Rural Area Flexibility Analysis

Amendments to 6 NYCRR Part 41, Sanitary Condition of Shellfish Lands, will not impose an adverse impact on rural areas. The marine district will be directly affected by regulatory initiatives to open or close shellfish lands to harvest. The Department of Environmental Conservation has determined that there are no rural areas within the marine district, and no shellfish lands within the marine district are located adjacent to any rural areas of the state. The proposed regulations will not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by amendments of Part 41, the Department of Environmental Conservation has determined that a Rural Area Flexibility Analysis is not required.

Consolidated Job Impact Statement

1. Nature of impact:

Environmental Conservation Law section 13-0307 requires that the department examine shellfish lands and certify which shellfish lands are in such sanitary condition that shellfish may be taken for use as food. Shellfish lands that do not meet the criteria for certified (open) shellfish lands must be designated as uncertified (closed) to protect public health.

Rule makings to amend 6 NYCRR 41, Sanitary Condition of Shellfish Lands, can potentially have a positive or negative effect on jobs for shellfish harvesters. Amendments to reclassify areas as certified may increase job opportunities, while amendments to reclassify areas as uncertified may limit harvesting opportunities.

The department does not have specific information regarding the locations in which individual diggers harvest shellfish, and therefore is unable to assess the specific job impacts on individual shellfish diggers. In general terms, amendments of 6 NYCRR Part 41 to designate areas as uncertified can have negative impacts on harvesting opportunities. The extent of the impact will be determined by the acreage closed, the type of closure (year-round or seasonal), the area's productivity, and the market value of the shellfish. In general, any negative impacts are small because the department's actions to designate areas as uncertified typically only affect a small portion of the shellfish lands in the state. Negative impacts are also diminished in many instances by the fact that shellfish harvesters are able to redirect effort to adjacent certified areas.

2. Categories and numbers affected:

Licensed commercial shellfish diggers can be affected by amendments to 6 NYCRR Part 41. Most harvesters are self-employed, but there are some who work for companies with privately controlled shellfish lands or who harvest surfclams or ocean quahogs in the Atlantic Ocean.

As of August 5, 2015 there were 1,649 licensed shellfish diggers in New York State. The numbers of permits issued for areas in the State are as follows: Town of Babylon, 49; Town of Brookhaven, 285; Town of East Hampton, 239; Town of Hempstead, 107; Town of Huntington, 150; Town of Islip, 128; Town of North Hempstead, 4; Town of Oyster Bay, 111; Town of Riverhead, 60; Town of Shelter Island, 33; Town of Smithtown, 158; Town of Southampton, 158; Town of Southold, 227; New York City, 44; Westchester, 3; other, 16.

It is estimated that ten (10) to twenty-five (25) percent of the diggers are full-time harvesters. The remainders are seasonal or part-time harvesters.

3. Regions of adverse impact:

Certified shellfish lands that could potentially be affected by amendments to 6 NYCRR Part 41 are located in or adjacent to Nassau County and Suffolk County. There is no potential adverse impact to jobs in any other areas of New York State.

4. Minimizing adverse impact:

Shellfish lands are designated as uncertified to protect public health as required by the Environmental Conservation Law. Some impact from rule makings to close areas that do not meet the criteria for certified shellfish lands is unavoidable.

To minimize the impact of closures of shellfish lands, the department evaluates areas to determine whether they can be opened seasonally during periods of improved water quality. The department also operates conditional harvesting programs at the request of, and in cooperation with, local governments. Conditional harvesting programs allow harvest in uncertified areas under prescribed conditions, determined by studies, when bacteriological water quality is acceptable. Additionally, the department operates shellfish transplant harvesting programs which allow removal of shellfish from closed areas for bacterial cleansing in certified areas, thereby recovering a valuable resource. Conditional harvesting and shellfish transplant programs increase harvesting opportunities by making the resource in a closed area available under controlled conditions.

5. Self-employment opportunities:

A large majority of shellfish harvesters in New York State are self-employed. Rule makings to change the classification of shellfish lands can have an impact on self-employment opportunities. The impact is dependent on the size and productivity of the affected area and the availability of adjacent lands for shellfish harvesting.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

Office of Mental Health

NOTICE OF ADOPTION

Visitation and Inspection of Facilities

I.D. No. OMH-44-15-00002-A
Filing No. 59
Filing Date: 2016-01-12
Effective Date: 2016-01-27

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

Action taken: Amendment of section 553.5 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.02, 31.04, 31.05, 31.09, 31.13 and 31.19

Subject: Visitation and Inspection of Facilities.

Purpose: To conform existing regulations to statute and enable external entity to perform reviews and inspections.

Text or summary was published in the November 4, 2015 issue of the Register, I.D. No. OMH-44-15-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: regs@omh.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Safety Hearings

I.D. No. MTV-04-16-00005-P

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

Proposed Action: This is a consensus rule making to amend section 127.6 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 303(f), 398-f, 415(a), 510(3) and 1194(2)(c)

Subject: Safety hearings.

Purpose: Conforms standard of proof to Court of Appeals decision and DMV practice.

Text of proposed rule: Subdivision (b) of section 127.6 is amended to read as follows:

(b) Rules governing the admissibility of evidence in a court of law are not applicable to hearings held by the department. Evidence which would not be admissible in a court, such as hearsay, is admissible in a departmental hearing. [However, a decision by a hearing officer] *The standard of proof at a hearing* shall be [based upon substantial] *the preponderance of the* evidence.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: ida.traschen@dmv.ny.gov

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

Consensus Rule Making Determination

This proposed consensus rule conforms the Commissioner's regulations to the Department of Motor Vehicles' long-standing practice of using the "preponderance of the evidence" as the standard of proof in the Department's safety hearings. A safety hearing refers to a hearing to investigate a fatal accident, a chemical test refusal hearing, or a hearing to determine whether a regulated party, such as an inspection station or a repair shop, has violated the law. While the current version of 15 N.Y.C.R.R. 127(6) provides that decisions at safety hearings may be based upon "substantial evidence," the Department has consistently instructed and trained its safety hearing officers to make such determinations based upon a preponderance of the evidence. Similarly, the Department's written hearing officer manual instructs safety hearing officers to determine matters based upon a preponderance of the evidence. In addition, in Miller v DeBuono, 90 NY2d 733, the Court of Appeals held that the preponderance of the evidence was the appropriate standard of proof at an administrative hearing.

Since this rulemaking reflects current Department practice and reflects the holding of the Court of Appeals, it is appropriately submitted as a consensus rule.

Job Impact Statement

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

International Registration Plan

I.D. No. MTV-04-16-00006-P

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

Proposed Action: This is a consensus rule making to amend section 28.1 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 405-I

Subject: International Registration Plan.

Purpose: To remove the exemption for charter buses from the International Registration Plan.

Text of proposed rule: Paragraph (3) of subdivision (c) of section 28.1 is amended to read as follows:

(3) Exceptions. Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, recreational vehicles, vehicles displaying restricted plates[,chartered buses] and government-owned vehicles, are not apportionable vehicles but may be registered under the plan at the option of the registrant. [Buses used in the transportation of chartered parties are not subject to IRP registration, but may be IRP registered at the option of the registrant.] For the purposes of this Part, restricted plates issued by this State shall be agricultural commercial plates, special purpose commercial plates, historical plates and farm plates.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: ida.traschen@dmv.ny.gov

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

Consensus Rule Making Determination

The purpose of this consensus rule is remove the exemption for charter buses from the International Registration Plan (the Plan), thereby requiring such buses to register with IRP or obtain a trip permit from the appropriate jurisdiction.

Chapter 755 of the Laws of 1987 authorized the Commissioner of Motor Vehicles to enter into a reciprocal agreement to have this State become a member of the International Registration Plan. The International Registration Plan is a registration reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions.

The unique feature of this Plan is that, even though license fees are paid to the various jurisdictions in which fleet vehicles are operated, only one license plate and one cab card is issued for each fleet vehicle when registered under the Plan. A fleet vehicle is known as an apportioned vehicle and such vehicle, so far as registration is concerned, may be operated both inter-jurisdictionally and intra-jurisdictionally.

The members of the Plan voted on September 18, 2014 to remove the exemption for charter buses. This change makes sense for two reasons. First, it aligns charter buses with other buses, all of which are subject to the Plan. Second, charter buses will be subject to the federal Performance and Registration Information Systems Management (PRISM) program which monitors carrier and drivers safety.

The DMV has been working with motor carriers that operate charter buses to insure a smooth transition to the Plan. The DMV expects no opposition to this proposed amendment and, therefore, it is submitted as a consensus rule.

Job Impact Statement

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development.

Office of Parks, Recreation and Historic Preservation

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Replaces Outdated Regional Hunting Regulations with a Statewide Regulation Establishing a Framework for Regional Hunting Permits

I.D. No. PKR-04-16-00001-P

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

Proposed Action: Repeal of sections 397.4, 398.4, 398.5, 399.2, 400.4, 415.3, 416.2 and 417.2; amendment of sections 401.2, 402.2, 372.7 and 375.1 of Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, sections 3.02, 3.09(5) and 3.09(8)

Subject: Replaces outdated regional hunting regulations with a statewide regulation establishing a framework for regional hunting permits.

Purpose: Better enable regions to manage hunting through permit conditions rather than regional regulations.

Text of proposed rule: Title 9 NYCRR Part 397.4, pertaining to the Niagara region and entitled "Hunting and trapping" is repealed.

Title 9 NYCRR Part 398.4, pertaining to the Allegany region and entitled "Hunting and trapping" is repealed.

Title 9 NYCRR § 398.5, pertaining to the Allegany region and entitled "Hunting areas" is repealed.

Title 9 NYCRR Part 399.2, pertaining to the Genesee region and entitled "Hunting and trapping" is repealed.

Title 9 NYCRR Part 400.4, pertaining to the Finger Lakes region and entitled "Hunting" is repealed.

Title 9 NYCRR Part 401.2, pertaining to the Central region and entitled "Hunting; trapping; fishing" is amended as follows:

Section 401.2. [Hunting; trapping; f]*F*ishing

[(a) No person except under permit from the commissioner shall hunt, pursue, trap or in any way molest any wild birds or animals, nor shall any person have any such wild bird or animal in his possession.

(b)] No person shall fish in any waters except at such times and such places where fishing shall be permitted, and then only in accordance with existing State fish and game laws, rules and regulations.

Title 9 NYCRR Part 402.2, pertaining to the Taconic region and entitled "Hunting and fishing" is amended as follows:

Section 402.2. [Hunting and f]*F*ishing

[(a) No person shall kill, wound, hunt, trap, molest or in any way take or remove or have in his possession any wild animal, fowl, bird, reptile, amphibian, or shellfish or the eggs of any of the above, from any real property within the Seventh Park Region (Taconic region), except as noted below:

(1) Taconic State Park. Except in areas designated "No Hunting," deer hunting is allowed during the seasons and in the manner prescribed by the Environmental Conservation Law and rules and regulations of the Department of Environmental Conservation relating thereto.

(2) Lake Taghkanic State Park. Except in areas designated "No Hunting," deer hunting is allowed only with a longbow and arrow during the seasons and in the manner prescribed by the Environmental Conservation Law and rules and regulations of the Department of Environmental Conservation relating thereto.

(3) Clermont State Park and Clermont Historic Site. Waterfowl hunting is allowed west of the New York Central railroad tracks and on the lands under water as prescribed by the Environmental Conservation Law and rules and regulations of the Department of Environmental Conservation relating thereto, as well as those of the government of the United States. No hunting blind may be constructed without a permit issued by the regional park office.

(4) Clarence Fahnestock State Park.

(i) Except in areas designated "No Hunting," deer hunting is allowed only with a longbow and arrow during the seasons and in the manner prescribed by the Environmental Conservation Law and rules and regulations of the Department of Environmental Conservation relating thereto.

(ii) Except in areas designated "No Hunting," turkey hunting is allowed pursuant to a permit issued by the commissioner and in the manner prescribed by the Environmental Conservation Law and rules and regulations of the Department of Environmental Conservation relating thereto, except that such hunting (a) shall be permitted only from May 1st through May 16th; (b) shall not be permitted on Saturdays, Sundays or holidays; and (c) shall be permitted only from one-half hour before sunrise until 10 a.m.

(5) Hudson Highlands State Park.

(i) Except in areas designated "No Hunting," deer hunting is allowed only with a longbow and arrow during the seasons and in the manner prescribed by the Environmental Conservation Law and rules and regulations of the Department of Environmental Conservation relating thereto.

(ii) Except in areas designated "No Hunting," turkey hunting is allowed pursuant to a permit issued by the commissioner and in the manner prescribed by the Environmental Conservation Law and rules and regulations of the Department of Environmental Conservation relating thereto, except that such hunting (a) shall be permitted only from May 1st through May 16th; (b) shall not be permitted on Saturdays, Sundays or holidays; and (c) shall be permitted only from one-half hour before sunrise until 10 a.m.

(b)] *(a)* No person shall fish at any State historic site within the Seventh Park Region (Taconic region), or at James Baird State Park, except as otherwise provided in this subdivision.

(1) Bass fishing shall be permitted in the pond at the Olana historic site during such times that may be designated therefor.

(2) Open season, size and limits shall be regulated by the Environmental Conservation Law.

(3) Manner of fishing shall be regulated by the Environmental Conservation Law.

[(c)] *(b)* Trout fishing in Stillwater Lake, Iron Mine Pond, Ore Pit Pond, and Weed Mines Pond within the Seventh Park Region (Taconic region), shall be governed by the following regulations:

(1) Open season and size shall be regulated by Environmental Conservation Law.

(2) Daily limit shall be three fish per person.

(3) Manner of fishing shall be restricted to the use of any legal bait or lure other than bait fish.

Title 9 NYCRR Part 415.3, pertaining to the Long Island region and entitled "Preservation of fish and wildlife" is repealed.

Title 9 NYCRR Part 416.2, pertaining to the Thousand Islands region and entitled "Hunting" is repealed.

Title 9 NYCRR Part 417.2, pertaining to the Saratoga-Capital region and entitled "Hunting and trapping" is repealed.

Title 9 NYCRR Part 372.7, entitled "Activities requiring a permit" is amended as follows:

Subdivision (p) of Section 372.7 is amended and Subdivision (q) and (r) are added as follows:

(p) *The use or possession of any* [B]*b*ows and arrows or muzzle-loading weapons. Except for hunting [where] permitted *under subdivision (q),* [by a rule or regulation of a regional park, recreation and historic preservation commission, the use or possession of any bow and arrow or muzzle-loading weapon.] [P]*p*ermits shall be subject to the following conditions:

(1) The use of bows and arrows shall be restricted to areas specifically designated[and established] for that purpose *and conducted*[. Such use shall at all times be] under the direction of a qualified supervisor.

(2) The use of muzzle-loading weapons shall be limited to demonstrations and interpretive programming conducted by staff members at State historic sites and to special events sponsored by the office, such as the reenacting of Revolutionary or Civil War battles. The weapons shall be loaded with blanks only.

(q) Hunting. The killing, wounding, hunting, molesting, taking, removing, or possession of any nest, game, wildlife, shellfish, crustacean, protected insects, or the eggs of any of the above, on or from any lands under the jurisdiction of the office, except pursuant to a permit issued by the region (Regional Permit).

(1) Regional Permits may include but not be limited to the following conditions: the areas designated for hunting; the species to be hunted; the implements to be used for hunting; and the dates and hours during which hunting is permitted.

(2) Except as otherwise provided in this Part and Regional Permit conditions, the provisions of the Environmental Conservation Law and its implementing regulations in relation to hunting, including those relating to open seasons, hunting hours, manner of taking, use of firearms, tagging, and transportation, shall apply in the areas designated for hunting.

(3) The erection of permanent hunting blinds is prohibited. Regional permits may include a provision allowing a temporary hunting blind.

(4) The erection of permanent tree stands is prohibited. Portable tree stands may be allowed by regional permit provided that they do not damage any trees. Cutting, placing nails or screws into, or otherwise damaging trees or other vegetation is prohibited.

(5) No person shall hunt in an area of a park that is posted or otherwise identified as a "Restricted Area."

(6) A regional permit shall be valid only for the period for which it is issued, shall not be transferred, and may be revoked at any time.

(7) Hunters shall provide a report of their take when requested by the region.

(r) Trapping. The trapping of any game or wildlife on or from any lands under the jurisdiction of the office. The Commissioner may issue a permit or authorize the region to issue a permit for trapping if the Office has determined that the population of a specific species has increased to the extent that it may damage vegetation, constitute a hazard to the general public, threaten a state-listed species, or damage buildings or infrastructure.

Title 9 NYCRR Part 375.1, entitled "Activities absolutely prohibited" is amended as follows:

Subdivision (p) of Section 375.1 is amended as follows:

(p) Firearms and weapons.

(1) Notwithstanding the provisions of paragraph (2) *and (3)* of this subdivision, no person, other than a member of a Federal, State or municipal law enforcement agency, shall introduce or possess, either upon the person or within a vehicle, or use any firearm*, bow, crossbow,* or any instrument or weapon the propelling force of which is a spring, rubber or air or any ammunition or propellant therefor, [or a bow and arrow, except for hunting where permitted by a rule or regulation of a regional park, recreation and historic preservation commission or pursuant to a permit issued by a region according to the provisions of section 376.1(r) of this Title] *except pursuant to a permit issued according to part 372 of this Title*.

(2) Any person employed by a private security firm which has contracted with the office or with a lessee or licensee of the office for services on property under the jurisdiction, custody and control of the office shall be permitted, with the approval of the office, to carry a firearm supplied by his or her employer in the course of his or her employment on such property, provided that such person is licensed pursuant to section 400.00 of the Penal Law and meets such minimum qualifications as may be established by the commissioner. In addition, any firm providing security services on lands under the jurisdiction of the office shall provide public liability insurance, naming the State as an insured party, in such amounts as the commissioner shall require.

(3) On certain facilities of the Office, to be determined by the Commissioner, a person may possess an unloaded weapon for the purpose of accessing adjacent properties for lawful hunting purposes. The list of facilities shall be published on the Office's public website.

Text of proposed rule and any required statements and analyses may be obtained from: Shari Calnero, Office of Parks, Recreation and Historic Preservation, OPRHP, Albany, NY 12238 (for USPS mailing), 625 Broadway, Albany NY 12207 (for physical delivery), (518) 486-2921, email: rule.making@parks.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

This Regulatory Impact Statement (RIS) describes the Office of Parks, Recreation and Historic Preservation's (OPRHP or Agency) proposed rule that updates and modernizes the procedures for obtaining permission from the Agency to hunt within areas of parks and historic sites that have been designated by the regional offices.

Statutory authority: Section 3.02 of the Parks, Recreation and Historic Preservation Law (PRHPL or Parks Law) directs OPRHP to provide for the public enjoyment of and access to the State's resources. In addition, sections 3.09(5) and 3.09(8) authorize OPRHP to provide for the health, safety, and welfare of the public using facilities under its jurisdiction and to adopt regulations necessary to carry out the functions of the office. The Agency already regulates hunting through regional regulations found at §§ 397.4, 398.4, 398.5, 399.2, 400.4, 401.2, 402.2, 415.3, 416.2, and 417.2. Those regional regulations of will be repealed and replaced with a statewide regulation set forth in 372.7, which provides a framework for hunting permits that will continue to be issued by the regions. Trapping permits will continue to be issued by the Commissioner or her designee as necessary to manage wildlife.

Legislative objectives: Updating the archaic regional hunting rules confirms OPRHP's longstanding authority to place statewide conditions on hunting activities within state parks and state historic sites. The rule enhances recreational opportunities for hunters across the state park system and protects the safety and welfare of the public. The rule establishes a consistent permit framework for hunting across the ten park regions under OPRHP's jurisdiction and simplifies compliance both for the regional offices and the State's hunters. Hunting on OPRHP properties is prohibited under the rule except when conducted in an area designated by a regional permit and in compliance with the applicable provisions of the Environmental Conservation Law. The rule also establishes certain criteria for permit issuance and enumerates safety measures.

Needs and benefits: OPRHP manages public recreational uses for more than 60 million visitors to its parks and historic sites each year. By adding hunting and trapping to the statewide list of permitted activities, the proposed rule allows the Agency to simplify the process by which regional offices ensure the activities are conducted safely within designated areas of the system. The rule, in conjunction with the permit conditions set by the regional offices, will mitigate or avoid hunting conflicts with other public uses as well as protect park patrons and employees. The present, archaic and disparate sets of hunting regulations established by regional commissions in the 1970s do not reflect OPRHP's existing regional hunting practices. The new statewide regulation would allow the regions to designate hunting areas and manage hunting through permit conditions that can be adjusted annually to meet the region's operational needs.

Providing public recreational opportunities in a safe environment is central to OPRHP's statutory mission. Currently, the Agency issues permits for a broad range of activities under Section 372.7, including, for example, camping, picnicking, and the use of fireworks, model planes, and metal detectors. The regulation of those activities is necessary to avoid conflicts between uses and to promote public safety. As hunting and trapping undoubtedly cause their own use conflicts and risks to public safety, OPRHP is obligated to regulate them in a consistent and coherent manner.

Cost: The benefits associated with unified, updated, and flexible permit frameworks for hunting and trapping will simplify compliance for the regional offices as well as the state's hunters and trappers. It could increase the likelihood that the public will pursue hunting and obtain licenses that provide additional revenue to the State. This rule will also benefit the public by allowing the regions to continue to provide security for park visitors and employees. OPRHP staff will continue to review the appropriateness and timing of these activities in designated areas and will review the proposed regional permit conditions. As the rule is intended to streamline the regulation of hunting in the regions, OPRHP should not incur any costs as a result of promulgation.

Local government mandates: The proposed rule does not affect local governments.

Paperwork: The proposed rule will require Albany staff to continue to review the areas designated for hunting as well as the conditions under which permitted members of the public may hunt but this could be done through emails. Hunters will continue to file applications and obtain permits from the regions but the Agency is exploring ways to reduce paperwork and streamline this permit process.

Duplication: None.

Alternatives: There is no alternative to streamlining the existing process for issuing hunting permits to make it compatible with current practice in the regions.

Federal standards: None.

Compliance schedule: The rule will take effect on the date the Notice of Adoption is published in the State Register.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. The rule replaces scattered, outdated sets of regional hunting regulations with an updated statewide regulation that conforms to current permitting practices. Therefore, the rule does not impose any additional burden on small business or local government and a Regulatory Flexibility Analysis is not required.

Rural Area Flexibility Analysis

This rulemaking does not impact any rural areas as defined in New York State Administrative Procedure Act section 102(10). The rule replaces scattered, outdated sets of regional hunting regulations with an updated statewide regulation that conforms to current permitting practices. Therefore, the rule does not impose any additional regulatory burden and a Rural Area Flexibility Analysis is not required.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. The rule replaces disparate, outdated sets of regional hunting regulations with an updated statewide regulation that conforms to current permitting practices.

Public Service Commission

NOTICE OF ADOPTION

Joint Petition of Time Warner and Charter

I.D. No. PSC-30-15-00003-A
Filing Date: 2016-01-08
Effective Date: 2016-01-08

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

Action taken: On 1/8/16, the PSC adopted an order approving a joint petition of Time Warner Cable Inc. (Time Warner) and Charter Communications, Inc. (Charter) for a holding company level transaction.

Statutory authority: Public Service Law, sections 99(2), 100(1), 101 and 222

Subject: Joint petition of Time Warner and Charter.

Purpose: To approve a joint petition of Time Warner and Charter.

Substance of final rule: The Commission, on January 8, 2016, adopted an order approving a joint petition of Time Warner Cable Inc. and Charter Communications, Inc. for a holding company level transaction transferring control of Time Warner Cable Information Services (New York), LLC, Time Warner Cable Business LLC, Time Warner Cable Northeast LLC, and Time Warner Cable New York City LLC to Charter Communications, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-M-0388SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether Hamilton Municipal Utilities Should be Permitted to Construct and Operate a Municipal Gas Distribution Facility

I.D. No. PSC-04-16-00007-P

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

Proposed Action: The Public Service Commission is considering a petition filed on December 27, 2013, and supplemented on December 31, 2015, by Hamilton Municipal Utilities regarding approval to create a Municipal Gas Distribution Facility.

Statutory authority: Public Service Law, sections 65 and 68

Subject: Whether Hamilton Municipal Utilities should be permitted to construct and operate a municipal gas distribution facility.

Purpose: Consideration of the petition by Hamilton Municipal Utilities to construct and operate a municipal gas distribution facility.

Substance of proposed rule: The Public Service Commission is considering a petition filed on December 27, 2013, and further supplemented on December 31, 2015, by Hamilton Municipal Utilities (Hamilton) regarding approval to create a Municipal Gas Distribution Facility. Buy Order dated April 24, 2014 (April 24, 2014 Order), the Commission granted Hamilton a Certificate of Public Convenience and Necessity under Public Service Law § 68. As part of its April 24, 2014 Order, the Commission required Hamilton to perform by December 31, 2015, a customer survey and an economic feasibility study for possible extension of mains and services to provide gas delivery service to residents in the neighboring Village of Madison. In compliance, on December 31, 2015, Hamilton submitted plans and proposals addressing the feasibility of bringing natural gas to the neighboring village of Madison. Included in its filing were Hamilton's Economic Feasibility Study, customer survey, map of the proposed natural gas line, and estimated costs associated with the extension of mains and services to the Village of Madison. Hamilton claims the extension into the Village of Madison is currently not economically feasible. In addition to the foregoing, Hamilton's December 31, 2015 filing requests to extend, indefinitely, the existing energy efficiency program that was approved on an interim basis in the April 24, 2014 Order. Hamilton proposes to fund the energy efficiency program and recover costs associated with administering the program through the application of $0.01 per Ccf adder through its Gas Adjustment Clause (GAC). The adder was based on 2015 projected sales of one million Ccf and aims to recover $10,000 in total; which would provide approximately 30 rebates of $330 per rebate. The Commission may grant, modify or deny, in whole or in part, Hamilton's energy efficiency request and may take any action related to the other filed documentation regarding a possible extension of gas service to the Village of Madison, and may 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: 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.

(13-G-0584SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Clean Energy Standard

I.D. No. PSC-04-16-00008-P

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

Proposed Action: The Commission is considering a Clean Energy Standard to provide funding for the construction of new and continuing support for existing renewable and other non-emitting electric generating facilities.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (2), (3), (5), (8) and (12)

Subject: Clean Energy Standard.

Purpose: To consider funding for renewable and other non-emitting electric generation facilities.

Substance of proposed rule: The Public Service Commission is considering a Department of Public Service Staff (Staff) proposal for a Clean Energy Standard to provide funding for the construction of new and continuing support for existing renewable and other non-emitting electric generating facilities. The proposal includes a program design for a new Clean Energy Standard to support the State's environmental and clean energy goals, specifically: 40% reduction in greenhouse gas emissions from 1990 levels; 50% of electricity generation coming from carbon-free renewables; and 600 trillion Btu in energy efficiency gains, which equates to a 23% reduction from 2012 in energy consumption in buildings. Staff's proposal would provide funding to support renewable energy resources as well as nuclear and other types of facilities that do not emit greenhouse gases or other pollutants while generating electricity. 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, NY 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Katheen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223, (518) 474-6530, email: kathleen.burgess@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.

(15-E-0302SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Central Hudson's Remote Net Metering Qualification Requirements and Application Process for Farms

I.D. No. PSC-04-16-00009-P

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

Proposed Action: The Commission is considering a petition filed by Hudson Solar to modify the remote net metering qualification requirements and application process for farms of Central Hudson Gas & Electric Corporation (Central Hudson).

Statutory authority: Public Service Law, sections 5(2), 66-j and 66-l

Subject: Central Hudson's remote net metering qualification requirements and application process for farms.

Purpose: Consider Central Hudson's remote net metering qualification requirements and application process for farms.

Substance of proposed rule: The Public Service Commission is considering Hudson Solar's Petition To Modify Central Hudson's Remote Net Metering Qualification Requirements and Application Process for Farms under Public Service Law § 66-j, filed December 29, 2015. The Petition requests that the Commission modify requirements of Central Hudson Gas & Electric Corporation (Central Hudson) to simplify its application process for family farms, as well as to provide more clarity to all applicants. The Petition also requests that William Werba, a Hudson Solar customer, be given credit by Central Hudson for all generation from the date interconnection of his solar photovoltaic generation system was approved, July 30, 2015. The Commission may grant or deny, in whole or in part, the relief requested, 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.

(15-E-0757SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proposed Revisions to Add and Clarify Provisions Related to Electric Generators Under SC No. 14

I.D. No. PSC-04-16-00010-P

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

Proposed Action: The Commission is considering a proposal by Niagara Mohawk Power Corporation d/b/a National Grid to revise provisions related to electric generators under SC No. 14—Gas Transportation Services for Dual Fuel Electric Generators in P.S.C. No. 219—Gas.

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

Subject: Proposed revisions to add and clarify provisions related to electric generators under SC No. 14.

Purpose: To consider revisions to SC No. 14 and align the electric generator provisions with its downstate companies, KEDLI and KEDNY.

Substance of proposed rule: The Public Service Commission is considering modifications proposed by Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) to Service Classification (SC) No. 14 - Gas Transportation Services for Dual Fuel Electric Generators in P.S.C. No. 219 - Gas. NMPC proposes to add and clarify provisions related to electric generators that take transportation service under SC No. 14 as well as align the provisions with National Grid's downstate companies, KeySpan Gas East Corporation d/b/a National Grid (KEDLI) and The Brooklyn Union Gas Company d/b/a National (KEDNY). NMPC proposes to: (1) offer a daily balancing service to electric generators; (2) establish daily balancing provisions that are aligned with KEDLI and KEDNY that specify cashout tier limits and cashout prices for daily imbalances; (3) implement a daily balancing service demand charge applicable to electric generators taking daily balancing service to recover the cost of firm capacity assets used by NMPC to provide daily balancing service; (4) add and clarify provisions addressing negotiated gas transportation service options; (5) clarify the authorized gas use provisions and charges; (6) add new provisions to (a) address operational flow orders and noncompliance penalties, (b) allow NMPC to require electric generators to install and pay for a remote operated valve if the generator fails to comply with an issued interruption and require new electric generators to install and pay for remote operated valves; and (c) allow NMPC to waive the dual fuel requirement subject to NMPC's assessment that system reliability would not be compromised. The proposed amendments have an effective date of November 1, 2016. The Commission may adopt, modify, or reject, in whole or in part, the relief proposed and may resolve 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: 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.

(15-G-0759SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Investigation That Certain Practices of Central Hudson Gas and Electric Corporation Resulted in Violations of HEFPA

I.D. No. PSC-04-16-00011-P

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

Proposed Action: The Public Service Commission is considering a Petition, filed by Nobody Leaves Mid-Hudson, to investigate claims that certain practices of Central Hudson Gas and Electric Corporation resulted in violations of the Home Energy Fair Practices Act (HEFPA).

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

Subject: Investigation that certain practices of Central Hudson Gas and Electric Corporation resulted in violations of HEFPA.

Purpose: To consider the Petition of Nobody Leaves Mid-Hudson to investigate Central Hudson for claims of HEFPA violations.

Substance of proposed rule: The Commission is considering a Petition, filed by Nobody Leaves Mid-Hudson on December 21, 2015, to investigate claims that certain practices of Central Hudson Gas and Electric Corporation have resulted in violations of the Home Energy Fair Practices Act (HEFPA). The Commission may adopt, reject or modify, in whole or in part, the relief requested 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.

(15-M-0756SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proposal to Mothball Three Gas Turbines Located at the Astoria Gas Turbine Generating Station

I.D. No. PSC-04-16-00012-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 Notice of Intent from NRG Energy, Inc. to mothball three units at its Astoria Gas Turbine Generating Station located in New York City, New York.

Statutory authority: Public Service Law, sections 2(11), (13), 2(23), 5(1)(b), 65(1), (2), (3), 66(1), (2), (3), (5), (12) and 70

Subject: Proposal to mothball three gas turbines located at the Astoria Gas Turbine Generating Station.

Purpose: Consider the proposed mothball of three gas turbines located at the Astoria Gas Turbine Generating Station.

Substance of proposed rule: The New York State Public Service Commission (Commission) is considering a Notice of Intent to Mothball Astoria Gas Turbine Units 8, 10, & 11 (Mothball Notice) filed by NRG Energy, Inc. (NRG). The Mothball Notice asserts that the indicated gas turbine units currently are in a Forced Outage state and cannot be restored to service without extensive repairs that are not economically justifiable at this time. NRG proposes to mothball Units 8, 10, and 11, and requests that the Commission apply, and waive, a 90-day period for notices to mothball or retire a generation unit. 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-0003SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proposal to Find That Three Gas Turbines Located at the Astoria Gas Turbine Generating Station Are Uneconomic

I.D. No. PSC-04-16-00013-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 an economic analysis that NRG Energy, Inc. filed with the Notice of Intent to mothball three units at its Astoria Gas Turbine Generating Station located in New York City, New York.

Statutory authority: Public Service Law, sections 2(11), (13), 2(23), 5(1)(b), 65(1), (2), (3), 66(1), (2), (3), (5), (12) and 70

Subject: Proposal to find that three gas turbines located at the Astoria Gas Turbine Generating Station are uneconomic.

Purpose: Consider whether three gas turbines located at the Astoria Gas Turbine Generating Station are uneconomic.

Substance of proposed rule: The New York State Public Service Commission (Commission) is considering a petition that NRG Energy, Inc. (NRG) filed on January 4, 2016 requesting acceptance of its economic analysis accompanying its Notice of Intent to Mothball Astoria Gas Turbine Units 8, 10, & 11. According to NRG, the economic analysis satisfies the December 14, 2013 Commission order issued in Case 12-E-0359, which required NRG to demonstrate that a generation unit is uneconomic if the company were to propose deactivating that unit for financial reasons. 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-0004SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Extension of the Monetary Crediting Period to Thirty Years for Four Specified Photovoltaic Projects

I.D. No. PSC-04-16-00014-P

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

Proposed Action: The Commission is considering a petition filed by Distributed Sun LLC, Building Energy Development US, LLC, and Cornell University requesting an extension of the monetary crediting period to thirty years for four specified photovoltaic projects.

Statutory authority: Public Service Law, sections 66-j and 66-l

Subject: Extension of the monetary crediting period to thirty years for four specified photovoltaic projects.

Purpose: To consider extending the monetary crediting period to thirty years for four specified photovoltaic projects.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Distributed Sun LLC, Building Energy Development US, LLC, and Cornell University (collectively, the "Petitioners") on December 22, 2015, requesting an extension of the monetary crediting period to thirty years for four specified photovoltaic projects. The Petitioners request an Order determining that the Petitioners' four photovoltaic projects are eligible for grandfathering into monetary crediting under the Transition Plan Order, which provides that the minimum grandfathering period is twenty-five years (from the later of the date of the Transition Plan Order or the project in-service date) and that developers may petition for an extended grandfathering period. 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-0007SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minor Electric Rate Filing

I.D. No. PSC-04-16-00015-P

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

Proposed Action: The Public Service Commission is considering a proposed rate filing by the Village of Fairport to increase its annual electric revenues by approximately $464,440 or 2.49% to become effective July 1, 2016.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Minor electric rate filing.

Purpose: To consider the Village of Fairport's proposed increase in annual electric revenues by approximately $464,440 or 2.49%.

Substance of proposed rule: The Commission is considering a proposal filed by the Village of Fairport (Fairport) to increase its annual electric revenues by approximately $464,440 or 2.49%. Fairport states the primary reasons for the proposed rate increase are an expected low rate of return of 0.88% on surplus and increased expenses such as purchased power, labor and fringe benefits. The proposed filing has an effective date of July 1, 2016. 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-0005SP1)

Rochester-Genesee Regional Transportation Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Identifies Prohibited Conduct, Consequences of Prohibited Conduct, and the Available Appeals Process

I.D. No. RGT-04-16-00002-P

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

Proposed Action: Addition of Part 2800 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, art. 5

Subject: Identifies prohibited conduct, consequences of prohibited conduct, and the available appeals process.

Purpose: To provide rules governing prohibited conduct to enhance the safety of the public using RGRTA's transportation services.

Substance of proposed rule (Full text is posted at the following State website:http://www.myrts.com): § 2800.1. Introduction

(a) RGRTA provides public transportation services for the benefit of RGRTA and its subsidiaries, its employees and the public. To maintain services that are orderly, safe, secure, comfortable, and convenient, the Rules of Conduct are intended to regulate conduct occurring on RGRTA transit vehicles, within or upon RGRTA facilities and properties, including the RTS Transit Center located at 60 St. Paul Street in Rochester, New York, and in connection with RGRTA's provision of public transportation services. If any one or more of the provision(s) in the Rules of Conduct shall be declared by any court of competent jurisdiction to be contrary to law, then such provision(s) shall be null and void, and shall be deemed separable from the remaining provisions in the Rules of Conduct, and shall in no way affect the validity of the other provisions of the Rules of Conduct.

§ 2800.2. Definitions

(a) "Authority" and "RGRTA" each mean the Rochester Genesee Regional Transportation Authority and its wholly controlled subsidiaries (RTS, RTS Access, RTS Genesee, RTS Livingston, RTS Ontario, RTS Orleans, RTS Seneca, RTS Wayne, and RTS Wyoming).

(b) "Commercial activity or activities" shall mean any enterprise or venture by groups or individuals for the purpose of promoting or selling products or services to RGRTA employees or the general public, whether for profit or not.

(c) "Harassment" shall mean when a person intentionally and repeatedly acts in such a way that places another person in reasonable fear of physical injury; or when a person, with intent to harass, annoy, or alarm another person does any of the following to another person: strike, shove, kick, or otherwise subject to physical contact, or attempt to or threaten to do the same, or follow a person about in a public place or places, or engage in a course of conduct or repeatedly commit acts which alarm or seriously annoy such other person and which serve no legitimate purpose.

(d) "Loitering" shall mean remaining in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade, or commercial transactions involving the sale of merchandise or services, or for the purpose of entertaining persons.

(e) "Public communication activity or public activities" shall mean posting or distributing written material, collecting petition signatures, political campaigning, demonstrating, displaying signs, unscheduled performances, public speaking, conducting surveys, soliciting or receiving of funds or contributions, or otherwise communicating or attempting to communicate to the general public.

(f) "Public transportation services" shall include fixed route and paratransit services, whether operated by RGRTA or any governmental agency, private person, firm or corporation contracting with RGRTA.

(g) "RGRTA employee" shall mean any part-time or full-time, temporary or regular, exempt or non-exempt, represented or non-represented person, including an intern, who is compensated by RGRTA for services by wages, salary, or other remuneration.

(h) "RGRTA facilities and properties" shall mean all facilities, amenities, lands, interest in lands, air rights over lands, and rights of way of all kinds that are owned, leased, held, or used by RGRTA.

(i) "Transit-related activities" shall mean activities associated with the provision or support of RGRTA public transportation services, the use of those services by the general public, or RGRTA sales, promotion and maintenance activities in support of RGRTA services.

(j) "Transit Vehicle" shall include every motor vehicle, and any other device, which is capable of being moved within, upon, above, or below a public highway, that is owned or operated by RGRTA.

§ 2800.3. Prohibited Conduct

(a) Using any nicotine product, tobacco product, or smoking device except at a designated place.

(b) Any of the following: littering; or dumping any materials; or producing unreasonable noise; or disturbing others by engaging in raucous, unruly, aggressive, violent, or harmful behavior; or consuming or carrying an alcoholic beverage; or carrying or storing any firearm or other dangerous weapon or article; or engaging in any form of gambling.

(c) Expelling bodily fluid or human waste except in the appropriate areas of restroom facilities.

(d) Carrying hazardous material, especially flammable liquids or explosives.

(e) Hindering or seriously disrupting the provision or use of transit services.

(f) Tampering with fire and police apparatus or causing any false alarm of fire.

(g) Falsely reporting an incident.

(h) Destroying or damaging RGRTA property or any materials on transit property.

(i) Throwing any object at or within RGRTA transit vehicles, facilities, and properties; or at any person therein; or out of any door or window.

(j) Bringing any uncaged animal onboard or inside other than a service animal.

(k) Allowing any animal to unreasonably disturb others or interfere with transit-related activities.

(l) Roller-skating, roller-shoes, rollerblading, or skateboarding.

(m) Cycling except where public vehicle travel and access is permitted.

(n) Operating, stopping, standing, or parking a vehicle in any roadway or location restricted for use only by RGRTA transit vehicles or otherwise restricted.

(o) Eating in prohibited areas.

(p) Using a sound-amplifying device, except as authorized by RGRTA or its designee.

(q) Sitting or lying on floors, sidewalks, asphalt, or other ground covering; or lying on benches; or sleeping, camping, or storing personal property on benches and floors; or storing materials in front of doors.

(r) Entering any nonpublic areas without authorization from RGRTA personnel.

(s) Not wearing shoes and clothing.

(t) The following activities are all prohibited unless authorized by RGRTA: engaging in commercial or public communication activities; or engaging in any civic, cultural, and other special event; or affixing written or graphic material of any kind; or erecting material on the exterior or interior; or engaging in public activities involving sign or other similar apparatus of any kind; or engaging in any sport activity.

(u) Distributing, selling, or offering for sale or donation any written or printed material.

(v) Soliciting funds.

(w) Committing any act which tends to incite, or incites, an immediate breach of peace, including, but not limited to fighting, running, obscene language and boisterous conduct, personally abusive epithets, words or language of an offensive, disgusting or insulting nature, which are likely to provoke a violent reaction of fear, anger or apprehension.

(x) Engaging in sexual activity with oneself or others.

(y) Entering RGRTA transit vehicles, facilities, and properties while unable to care for oneself due to illness, intoxication, or medication(s).

(z) Misusing any component of RGRTA transit vehicles, facilities and properties in a manner that has the capacity to cause injury to oneself or others.

(aa) Failing to pay the appropriate fare or be in possession of the appropriate pass as required by RGRTA.

(bb) Falsely representing oneself as an RGRTA employee, or as eligible for a special fare, permit or pass related to the RGRTA transit system.

(cc) Refusing to allow proper securement of a wheelchair or mobility devices.

(dd) Tampering with RGRTA equipment.

(ee) Violating an exclusion order issued according to § 2008.4 Enforcement, or any federal, state, or municipal civil and criminal law.

(ff) Engaging in any harassment or loitering as defined in § 2008.2.

§ 2800.4. Enforcement

(a) Any person engaging in prohibited conduct may be refused entrance or ordered to leave by RGRTA personnel or designees; failure to comply may be grounds for arrest and prosecution.

(b) Engaging in prohibited conduct shall be cause for excluding a person from entering and using all or any part of RGRTA transit vehicles, facilities and properties for a period based on the number of violations in five years.

(c) The Chief Executive Officer, or designee, shall send written notice to the last known address of any person to be excluded. The notice shall specify the reason for exclusion, places and duration of the exclusion, the effective date of the exclusion, the appeal process, and provide the person an opportunity to respond within five business days of actual or constructive receipt of the notice. Exclusion starts on the sixth business day after actual or constructive receipt of the notice by the person being excluded. If the person timely requests an administrative review of the notice, the CEO, or designee, shall review the exclusion and render a written decision within five business days from the date of the person's request, and send the decision to the person's last known address. If the CEO deems the exclusion warranted, such exclusion is effective upon actual or constructive receipt of the written decision by the person to be excluded.

(d) Receipt of a notice is considered accomplished if the person reasonably should have known from the circumstances that he/she is excluded from RGRTA transit vehicles, facilities and properties. Receipt of a notice is also presumed accomplished three business days after the notice was sent.

(e) The notice procedure may be waived, if, in RGRTA's discretion, immediate conditions exist that pose safety or security risks; or impinge on the rights of others; or otherwise interfere with or disrupt RGRTA's transit related activities. In such immediate conditions, persons engaging in prohibited conduct may be reseated, refused transportation, or removed. The notice procedure shall not be available to a person immediately refused transportation or removed for any period less than 30 calendar days.

(f) Refusal to comply with the exclusion order shall be grounds for arrest and prosecution.

(g) The number of violations committed over a period of five years determines the duration of exclusion. The following are provided as guidelines: seven days exclusion for the first violation; 30 days exclusion for the second violation; 90 days exclusion for the third violation; and 180 days exclusion for each successive violation occurring in a five year period.

(h) The appeal process shall be provided to any person excluded for 30 days or more. Ten calendar days after the exclusion starts, an excluded person may appeal in writing to the CEO, or designee, for de novo review. The appellant may request a hearing or a review without a hearing based on a written statement setting forth the reasons why the exclusion is invalid or improper. If the excluded person is unable to respond in written format, RGRTA will make reasonable accommodation to allow due process. The CEO shall convene a Hearing Panel comprised of the Director of Transit Center and Field Operations or designee; Manager of Field Operations or designee; Director of RTS Bus Operations or designee; or a person selected from the RGRTA staff by the Chief Operating Officer or designee. The RGRTA staff person shall be a person other than the CEO. The majority decision shall be the decision of the Hearing Panel. The Hearing Panel shall hear the appeal or review the matter and render a written final decision within 20 calendar days after the receipt of the appeal.

(i) If a hearing is requested, the hearing shall be held within 20 calendar days after receipt of the appeal, and a written decision shall be rendered within 20 calendar days after the hearing. Exclusions continue during the appeal process. If an appellant requires public transportation services to attend the hearing, the appellant shall contact the CEO, or designee, five business days prior to the hearing date, and RGRTA shall provide the necessary public transportation services.

(j) The enforcement of § 2008.4 herein is not intended to limit, in any manner, the enforcement of any applicable federal, state or municipal laws, provided RGRTA is not authorized to assist a patron or employee in enforcing a court order prohibiting or restricting contact with any other person other than to notify appropriate law enforcement personnel via RGRTA's Radio Control/Dispatch or Security.

(k) Nothing in § 2008.4 herein shall create a duty to any person on the part of RGRTA or form any basis for liability on the part of RGRTA, its officers, agents, or employees. The obligation to comply with § 2008.4 is solely that of any person entering and using RGRTA transit vehicles, facilities, and properties and RGRTA's enforcement of § 2008.4 is discretionary not mandatory.

Text of proposed rule and any required statements and analyses may be obtained from: Daniel DeLaus, General Counsel, Rochester-Genesee Regional Transportation Authority ''RGRTA'', 1372 East Main Street, Rochester NY 14609, (585) 654-0771, email: ddelaus@myrts.com

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:

Public Authority Law Section 1299-hh 4 empowers RGRTA to promulgate rules governing the conduct and safety of the public in RGRTA facilities.

2. Legislative objectives:

The proposed RGRTA Rules of Conduct for Transit Vehicles, Facilities, and Properties will help RGRTA maintain order and safety at its facilities.

3. Needs and benefits:

In addition to helping RGRTA maintain order and safety in its facilities, the Rule will provide notice to members of the public regarding what conduct is allowed and not allowed in RGRTA facilities. RGRTA recently opened a Transit Center where thousands of customers arrive and transfer buses each day. RGRTA is obligated to do all it can to provide for order and safety in the Transit Center.

4. Costs:

The implementation of the Rule will not result in any additional costs to RGRTA or its customers as RGRTA already budgets for public safety. Promulgation of the RGRTA Rules of Conduct for Transit Vehicles, Facilities, and Properties will serve to provide more guidance to RGRTA personnel and customers.

5. Local government mandates:

The Rule will not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork:

Promulgation of the Rule will not result in any reporting requirements for RGRTA that do not already exist. Currently RGRTA creates reports to document any violation of its RGRTA Rules of Conduct for Transit Vehicles, Facilities, and Properties.

7. Duplication:

While some conduct that constitutes a violation of RGRTA Rules of Conduct for Transit Vehicles, Facilities, and Properties might also constitute violations of the New York State Penal Law, this is not a conflict as it is entirely proper for a violator to be charged with both.

8. Alternatives:

There were no significant alternatives to be considered for the RGRTA Rules of Conduct for Transit Vehicles, Facilities, and Properties.

9. Federal standards:

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

10. Compliance schedule:

Compliance will be required as soon as the Rule is formally promulgated.

Regulatory Flexibility Analysis

The RGRTA Rules of Conduct for Transit Vehicles, Facilities, and Properties are not rules that impose any fee or cost upon users of the transit vehicles or facilities. Instead, they simply require persons to behave as is typically expected in public transit areas all across the country. RGRTA is not including a cure period in this rulemaking. The purpose of this regulation is to establish standards that will assist conduct and safety of the public in RGRTA facilities.

Rural Area Flexibility Analysis

RGRTA's largest facility by far is its new Transit Center located in Downtown Rochester, New York. This is not a rural location but rather an urban one. While RGRTA has smaller facilities in some counties surrounding Rochester, they are not for use by the general public. While some RGRTA buses operate in rural areas, the rules will not result in any change to the fare structure for those routes.

Job Impact Statement

As the rule relates to a code of conduct for users of transit facilities, it is apparent from the nature of the rule that it will have no adverse effects on jobs or employment opportunities.