

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 ADOPTION

Jurisdictional Classification

I.D. No. CVS-34-15-00006-A
Filing No. 585
Filing Date: 2016-06-17
Effective Date: 2016-07-06

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the August 26, 2015 issue of the Register, I.D. No. CVS-34-15-00006-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-34-15-00011-A
Filing No. 587
Filing Date: 2016-06-17
Effective Date: 2016-07-06

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the August 26, 2015 issue of the Register, I.D. No. CVS-34-15-00011-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-34-15-00013-A
Filing No. 586
Filing Date: 2016-06-17
Effective Date: 2016-07-06

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the August 26, 2015 issue of the Register, I.D. No. CVS-34-15-00013-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-36-15-00002-A
Filing No. 598
Filing Date: 2016-06-21
Effective Date: 2016-07-06

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the September 9, 2015 issue of the Register, I.D. No. CVS-36-15-00002-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-36-15-00003-A
Filing No. 595
Filing Date: 2016-06-21
Effective Date: 2016-07-06

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the September 9, 2015 issue of the Register, I.D. No. CVS-36-15-00003-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-36-15-00004-A
Filing No. 597
Filing Date: 2016-06-21
Effective Date: 2016-07-06

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the September 9, 2015 issue of the Register, I.D. No. CVS-36-15-00004-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-36-15-00005-A
Filing No. 607
Filing Date: 2016-06-21
Effective Date: 2016-07-06

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the September 9, 2015 issue of the Register, I.D. No. CVS-36-15-00005-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-36-15-00008-A
Filing No. 608
Filing Date: 2016-06-21
Effective Date: 2016-07-06

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the September 9, 2015 issue of the Register, I.D. No. CVS-36-15-00008-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-36-15-00009-A
Filing No. 603
Filing Date: 2016-06-21
Effective Date: 2016-07-06

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the September 9, 2015 issue of the Register, I.D. No. CVS-36-15-00009-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-36-15-00010-A

Filing No. 604

Filing Date: 2016-06-21

Effective Date: 2016-07-06

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the September 9, 2015 issue of the Register, I.D. No. CVS-36-15-00010-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-36-15-00011-A

Filing No. 599

Filing Date: 2016-06-21

Effective Date: 2016-07-06

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the September 9, 2015 issue of the Register, I.D. No. CVS-36-15-00011-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-36-15-00012-A

Filing No. 606

Filing Date: 2016-06-21

Effective Date: 2016-07-06

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the September 9, 2015 issue of the Register, I.D. No. CVS-36-15-00012-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-36-15-00013-A

Filing No. 600

Filing Date: 2016-06-21

Effective Date: 2016-07-06

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the September 9, 2015 issue of the Register, I.D. No. CVS-36-15-00013-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-36-15-00014-A

Filing No. 596

Filing Date: 2016-06-21

Effective Date: 2016-07-06

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

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

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

Subject: Jurisdictional Classification.

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

Text of final rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Information Technology Services," by adding thereto the positions of Deputy Cluster Chief Information Officer (10).*

*Originally had been submitted as including "by deleting therefrom the position of Director Office for Technology (1)" which should not have been included.

Final rule as compared with last published rule: Nonsubstantive changes were made in Appendix 2.

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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-36-15-00015-A

Filing No. 602

Filing Date: 2016-06-21

Effective Date: 2016-07-06

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

Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the September 9, 2015 issue of the Register, I.D. No. CVS-36-15-00015-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-36-15-00017-A

Filing No. 601

Filing Date: 2016-06-21

Effective Date: 2016-07-06

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

Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class and to delete a position from the non-competitive class.

Text or summary was published in the September 9, 2015 issue of the Register, I.D. No. CVS-36-15-00017-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Jurisdictional Classification**

I.D. No. CVS-36-15-00018-A

Filing No. 605

Filing Date: 2016-06-21

Effective Date: 2016-07-06

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the September 9, 2015 issue of the Register, I.D. No. CVS-36-15-00018-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Education Department**EMERGENCY/PROPOSED****RULE MAKING****NO HEARING(S) SCHEDULED****Superintendent Determination As to Academic Proficiency for Certain Students with Disabilities to Graduate with a Local Diploma**

I.D. No. EDU-27-16-00002-EP

Filing No. 588

Filing Date: 2016-06-20

Effective Date: 2016-07-01

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

Proposed Action: Amendment of section 100.5(d) 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) and 309 (not subdivided)

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

Specific reasons underlying the finding of necessity: All students with disabilities must be held to high expectations and be provided meaningfully opportunities to participate and progress in the general education curriculum to prepare them to graduate with a regular high school diploma. The majority of students with disabilities can meet the State's learning standards for graduation. However, there are some students who, because of their disabilities, are unable to demonstrate their proficiency on standard State assessments, even with testing accommodations. For these students, the proposed amendment provides a superintendent review option in order for certain students with disabilities to graduate with a local diploma, beginning with students graduating in June 2016.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 12-13, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 28, 2016, the date a Notice of Adoption would be published in the State Register. However, the proposed amendment provides a superintendent review option in order for certain students with disabilities to graduate with a local diploma, beginning with students graduating in June 2016.

Therefore, emergency action is necessary at the June 2016 Regents meeting for the preservation of the general welfare in order to ensure that certain students with disabilities who are graduating from high school in June 2016 and thereafter are aware that if they do not meet the graduation standards through the existing appeal and safety net options, that the superintendent will make a determination as to whether the student has met the academic standards and is eligible for a diploma if the student meets the requirements of the proposed amendment. It is also necessary to ensure that superintendents are on notice that they must make a determination as to whether certain students with disabilities are eligible for local diploma if the student meets the requirements of the proposed amendment.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 12-13, 2016 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Superintendent determination as to academic proficiency for certain students with disabilities to graduate with a local diploma.

Purpose: To expand the safety net options for students with disabilities to graduate with local diplomas when certain conditions are met.

Text of emergency/proposed rule: A new paragraph (12) shall be added to subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education, effective June 20, 2016, to read as follows:

(12) Superintendent determination pathway for certain students with disabilities for eligibility for a local diploma. School districts, registered nonpublic high schools and charter schools shall ensure that every student who is identified as a student with a disability as defined in Education Law section 4401(1) and section 200.1(zz) of this Title and who does not meet the assessment requirements for graduation through the existing appeal and safety net options available through this section but is otherwise eligible to graduate in June 2016 and thereafter shall be considered for a local diploma through the superintendent determination pathway in accordance with the requirements of this clause, provided that the student:

(i) has a current individualized education program and is receiving special education programs and/or related services pursuant to Education Law section 4402 and section 200.4 of this Title; and

(ii) took the English Regents examination required for graduation pursuant to this section and achieved a minimum score of 55 or successfully appealed a score of between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision; and

(iii) took a mathematics Regents examination required for graduation pursuant to this section and achieved a minimum score of 55 or successfully appealed a score of between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision; and

(iv) participated in the remaining assessments required for graduation pursuant to clauses (c), (d), (e) and (f) of subparagraph (a)(5)(i) of this section, provided that if the student was unable to achieve a passing score on one or more of the remaining assessments required for graduation or to successfully appeal a score of between 52 and 54 on one or more such examinations pursuant to paragraph (7) of this subdivision, or did not initiate such an appeal pursuant to paragraph (7) of this subdivision, or to use the compensatory score option for one or more such examinations pursuant to clause (b)(7)(vi)(c) of this section, then the superintendent shall determine whether the student has otherwise demonstrated proficiency in the knowledge, skills and abilities measured by the relevant Regents examination(s) and shall document such determination in accordance with the following:

(a) the superintendent shall consider evidence that the student attained a grade for the course that meets or exceeds the required passing grade by the school and is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year. Such evidence shall include but need not be limited to the student's final course grade, student work completed throughout the school year and/or any interim grades on homework, projects, class work, quizzes and tests; and

(b) with respect to subparagraph (iv) of this paragraph, the superintendent shall consider the extent to which the student participated in such examination(s); and

(c) the superintendent shall, as soon as practicable, in a form and manner prescribed by the commissioner, document the evidence reviewed for an eligible student with disability under this paragraph and make a determination as to whether the student met the requirements for issuance of a local diploma pursuant to this clause and certify that the information provided is accurate; and

(d) the superintendent shall, as soon as practicable, provide each student(s) and parent or person in parental relation to the student with a copy of the completed form and must place a copy of the completed form in the student's record; and

(e) the superintendent shall, no later than August 31 of each year, provide the commissioner with a copy of the completed form for each student; and

(f) the commissioner may conduct audits of compliance with the requirements of this clause.

2. Clause (c) of subparagraph (i) of paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner is amended, effective June 13, 2016, as follows:

(c) A student who is otherwise eligible to graduate in January 2016 or thereafter, is identified as a student with a disability as defined in section 200.1(zz) of this Title, and fails, after at least two attempts, to attain a score of 55 or above on up to two of the required Regents examinations for graduation shall be given an opportunity to appeal such score in accordance with the provisions of this paragraph for purposes of graduation with a local diploma, provided that the student:

(1) has scored within three points of a score of 55 on the required Regents examination under appeal and has attained at least a 65 course average in the subject area of the Regents examination under appeal; and

(2) has met the criteria specified in subclauses (a)(2)-(4) of this subparagraph. [Notwithstanding the provisions of this clause, a student with a disability who makes use of the compensatory option in clause

(b)(7)(vi)(c) of this section to obtain a local diploma may not also appeal a score below 55 on the English language arts or mathematics Regents examinations pursuant to this clause.]

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 17, 2016.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 148, Albany, NY 12234, (518) 474-8966, email: legal@nysed.gov

Data, views or arguments may be submitted to: Angelica Infante-Greene, Deputy Commissioner for Instructional Support, New York State Education Department, 2M West, 89 Washington Avenue, Albany, NY 12234, (518) 474-5510, email: nysedp12@nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

Education Law section 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 3204(3) and (4) sets forth the course of study and requires students with disabilities to receive a free appropriate public education.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Regents relating to a superintendent review option for students with disabilities to graduate with a local diploma.

3. NEEDS AND BENEFITS:

All students with disabilities must be held to high expectations and be provided meaningful opportunities to participate and progress in the general education curriculum to prepare them to graduate with a regular high school diploma. The majority of students with disabilities can meet the State's learning standards for graduation. However, there are some students who, because of their disabilities, are unable to demonstrate their proficiency on standard State assessments, even with testing accommodations. For these students, the State is providing a superintendent review option for eligible students to graduate with a local diploma.

The proposed amendment to current regulations has been developed to ensure that students with disabilities have demonstrated that they have met the State's learning standards for graduation. As such, the school principal and superintendent must review, document and provide a written certification/assurance that there is evidence that the student has otherwise met the standards for graduation with a local high school diploma. Because ELA and math are foundation skills for which there must be a standardized measure of achievement, this option does require a minimum score on the ELA and math Regents exams. However, for the other three exams required for graduation, this option allows review of other documentation

of proficiency when the student cannot pass one or more of these exams. The conditions of the review are detailed below:

Applicability

This option would be open to students with disabilities with a current Individualized Education Program (IEP) only. It does not apply to students with section 504 accommodation plans or students who have been declassified from special education.

Process

Beginning with students with disabilities who are otherwise eligible to graduate in June 2016 and thereafter, a school superintendent (or the principal of a registered nonpublic school or charter school, as applicable) has the responsibility to determine if a student with a disability has otherwise met the standards for graduation with a local diploma when such student has not been successful, because of his/her disability, at demonstrating his/her proficiency on the Regents exams required for graduation.

Automatic Review

The superintendent must ensure that every student with a disability who does not meet the graduation standards through the existing appeal and safety net options is considered for the superintendent determination. This option does not need to be formally requested by the student or parent.

Condition

1. The student has a current IEP and is receiving special education programs and/or related services.

2. The student did not meet the graduation requirements through the low pass (55-64) safety net option¹ or the compensatory option² [section 100.5(b)(7)(vi)(c) and (d)(7)].

3. The student must have earned the required course credits and have passed, in accordance with district policy, all courses required for graduation, including the Regents courses to prepare for the corresponding required Regents exam areas (ELA, math, social studies, and science).

4. The student must have received a minimum score of 55 on both the Regents ELA and math exams or a successful appeal of a score between 52 and 54.

5. There must be evidence that the student participated in the other exams required for graduation pursuant to section 100.5(a)(5), but has not passed one or more of these as required for graduation.

6. In a subject area where the student was not able to demonstrate his/her proficiency of the State's learning standards through the assessment required for graduation, there must be evidence that the student has otherwise demonstrated graduation level proficiency in the subject area.

Review and Documentation

In conducting a review to ensure the student has met the academic standards, the superintendent must consider evidence that demonstrates that the student:

1. Passed courses culminating in the exam required for graduation, in accordance with the grading policies of the district. In making this determination, the superintendent must consider the student's final course grade as well as student work completed throughout the school year and/or interim grades on homework, projects, class work, quizzes, tests, etc., that demonstrate that the student has met the learning standards for the course; and

2. Actively participated in the exam required for graduation.

The school principal and superintendent must sign a document, on a form prescribed by the Commissioner, which describes the evidence reviewed and the decision rendered by the superintendent. The student and the parent of the student must receive a copy of this documentation and written notification of the superintendent's determination. Where the superintendent determines that the student has not met requirements for graduation, the notice must inform the student that he/she has the right to attend school until receipt of a local or Regents diploma or until the end of the school year in which the student turns age 21, whichever shall occur first.³

The superintendent must sign an assurance on the form that certifies that the information is accurate and the superintendent attests that the student has met graduation requirements. A copy of the form must be placed in the student's record and a copy must be submitted to the Department no later than by August 31st following the student's graduation.

Decision

A determination by the superintendent is final.

Audit

The Commissioner shall periodically audit the determinations granted by superintendents to ensure that conditions described above are being met.

Allowance of Low Pass Appeal in Addition to Compensatory Option

Under current regulations, students with disabilities who make use of the compensatory option described above are not eligible to also make use of the low pass appeal wherein they are able to appeal scores of 52-54. The proposed amendment removes this prohibition and allows these students to make use of both options in meeting graduation requirements.

4. COSTS:

(a) Costs to State: none.

(b) Costs to local governments: There may be costs associated with extending the population of students with disabilities can earn a local diploma. School districts, BOCES and registered non-publics may also incur costs for the superintendent review and with recording the evidence reviewed and the decision rendered by the superintendent in these reviews. However, these costs are anticipated to be minimal and capable of being absorbed by districts using existing staff and resources.

In the long term, the proposed amendment is expected to be a cost-saving measure in that it will boost the graduation rate, allowing more students to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

(c) Costs to private regulated parties: See (b) above.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment was developed to ensure that students with disabilities have demonstrated that they have met the State's learning standards for graduation. As such, the school principal and superintendent must review, document and provide a written certification/assurance that there is evidence that the student has otherwise met the standards for graduation with a local high school diploma. Because ELA and math are foundation skills for which there must be a standardized measure of achievement, this option does require a minimum score on the ELA and math Regents exams. However, for the other three exams required for graduation, this allows review of other documentation of proficiency when the student cannot pass one or more of these exams. This only applies to students with disabilities with a current Individualized Education Program (IEP) only.

Beginning with students with disabilities who are otherwise eligible to graduate in June 2016 and thereafter, a school superintendent (or the principal of a registered nonpublic school or charter school, as applicable) must determine if a student with a disability has otherwise met the standards for graduation with a local diploma when such student has not been successful, because of his/her disability, at demonstrating proficiency on the Regents exams required for graduation. The superintendent must ensure that every student with a disability who does not meet the graduation standards through the existing appeal and safety net options is considered for the superintendent determination, and need not be formally requested by the student or parent.

6. PAPERWORK:

The proposed rule does not impose any significant paperwork requirements, upon local government, including school districts or BOCES. However, when a superintendent makes a determination that a student has met the requirements for a local diploma, he/she must sign an assurance certifying that the information is accurate and attesting that the student has met graduation requirements. A copy of the form must be placed in the student's record and a copy must be submitted to the Department no later than by August 31st following the student's graduation.

7. DUPLICATION:

The proposed rule does not duplicate any existing State or federal requirements.

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed rule is necessary to implement Regents policy relating to safety net options for students with disabilities to graduate with a local diploma.

9. FEDERAL STANDARDS:

There are no related federal standards in this area.

10. COMPLIANCE SCHEDULE:

Beginning with students with disabilities who are otherwise eligible to graduate in June 2016 and thereafter, a school superintendent (or the principal of a registered nonpublic school or charter school, as applicable) has the responsibility to determine if a student with a disability has otherwise met the standards for graduation with a local diploma when such student has not been successful, because of his/her disability, at demonstrating his/her proficiency on the Regents exams required for graduation.

¹ A student also has the option to appeal a score of 52-54 on up to two Regents exams pursuant to section 100.5(b)(7)(vi)(c). While the appeal option exists, it is not required in order for a student to be considered for the superintendent's determination option.

² A student also has the option to appeal the ELA and/or math scores pursuant to section 100.5(d)(7). While the appeal option exists, it is not required in order for a student to be considered for the superintendent's determination option.

³ A student with a disability who has not yet earned a diploma and who

has not reached the age of 21 may reenroll in school and graduate through this option, provided the student has a current IEP, is participating in the required coursework and is receiving special education programs and services.

Regulatory Flexibility Analysis

(a) Small businesses:

In order to continue the extensive role played by NYS educators in the development of the new Social Studies Regents Exams, the first administrations of the new Regents Examination in Global History & Geography II will be shifted a year to allow for a transition year and will first be offered in June 2019. In effort to conform the current social studies examination requirements for a high diploma under section 100.5 of the Commissioner’s regulations to reflect this shift and to provide some flexibility to districts during this transition period, the proposed amendment does the following:

- shifts the requirement for students to take and pass the new Regents Examination in Global History & Geography II examination for graduation (instead of the prior Regents examination in global history and geography) for an additional year- so that it applies to students first entering grade nine on or after September 2017; and
- provides districts with flexibility during the transition period to the new Social Studies Regents examination. For the June 2019, August 2019, January 2020 and June 2020 administrations of the social studies Regents examinations, the proposed amendment provides local school districts or schools with discretion to determine whether to accept a passing score on the Global History & Geography I Regents examination (with content ranging from approximately 1751 to the present) or the Global History & Geography Regents examination II, or either examination, for the purpose of satisfying the general requirements for a diploma under section 100.5 of the Commissioner’s regulations; in addition to accepting a passing score on the Regents examination in U.S history and government.

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.

(b) 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 and nonpublic schools that are authorized to issue regular high school diplomas with respect to State assessments and high school graduation and diploma requirements.

2. COMPLIANCE REQUIREMENTS:

The Office of State Assessment has been working closely with members of the Content Advisory Panel to develop the new Regents Examination in Global History and Geography II. This group has worked to develop claims, evidence and performance level indicators for the new assessment as well as suggested question format. Surveys detailing the suggested format of the new assessment and prototype test items have been issued to solicit feedback from educators. The Content Advisory Panel has taken a lead role in analyzing this feedback and working to incorporate educator input into the new assessment design.

In order to ensure a gradual transition to the new Social Studies frameworks, and to continue the extensive role played by NYS educators in the development of the new Social Studies Regents Exams, the Global History and Geography Exam administered in June 2018, August 2018, and January 2019 would be based on the existing test framework, but revised to measure content only from the second year of the course consistent with the delineation made in the new frameworks (i.e., content covering approximately 1751 to the present). The transition year will allow for educators to adjust their curriculum and instruction to a model in which the scope and sequence in the second year of the course culminates in the Regents Exam. A similar transition the following year would apply to the U.S. History & Government Exam. The new Regents Examination in Global History & Geography II would first be offered in June 2019 and the Regents Examination in United States History & Government (2014 Framework) would first be offered in June 2020. Not only will this transition year allow educators a more thoughtful and gradual shift to the new frameworks, but this will also provide time for additional educator involvement in the development of these Regents Examinations to ensure they measure the new Frameworks with quality and fidelity. Additionally, this will ensure an extended period for notice and time for students to be prepared to take the new Regents Examinations in Social Studies.

The Department expects to continue to engage and inform educators regarding the ongoing development process and will issue guidance regarding the transition from the current Regents Examinations in Social Studies to the new Regents Examinations in the coming months. This will include guidance on which instruction and assessments (current vs. new

Framework) may be offered to students, based on their grade level during the applicable school year.

In an effort to conform the current diploma requirements to reflect the implementation of this transition year in 2017-18 and provide flexibility to school districts and students while the Department moves to the new Global History & Geography II Regents examination in 2018-19, the proposed amendment does the following:

- shifts the requirement for students to take and pass the new Regents Examination in Global History & Geography II for graduation (instead of the current Regents Examination in Global History Geography I) by one year to allow for the creation of a transition year - so that it applies to students first entering grade nine in September 2017 and thereafter; and
- provides local school districts or schools with the discretion to determine to accept a passing score on either the Global History & Geography I Regents examination (with content ranging from approximately 1751 to the present) or the Global History & Geography II Regents examination for the purpose of satisfying the general requirements for a diploma under section 100.5 of the Commissioner’s regulations during a period when both examinations (the current exam, but with content ranging from approximately 1751 to the present, and the new exam based on the new Social Studies Frameworks) are being administered (the June 2019, August 2019, January 2020 and June 2020 administrations).

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements on local governments. Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Regents policy relating to delaying the requirement for students to take and pass the new Regents Examination in Global History & Geography II examination for graduation. The proposed rule also provides flexibility for local governments during the transition period to the new Social Studies Regents examination.

Because the Regents policy upon which the proposed amendment is based applies to all school districts in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt school districts or charter schools from coverage by the proposed amendment.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, from the chief school officers of the five big city school districts and from 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 rule is necessary to implement long-range Regents policy providing for a transition to the new Regents Examination in Global History & Geography II. The first administration of the new Regents Examination in Global History & Geography II will be in June 2019m and provides flexibility to school districts through the June 2020 administration. 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 Emergency Adoption 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, charter schools, and registered nonpublic schools in the State, to the extent that they offer instruction in the high school grades, 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 Office of State Assessment has been working closely with members of the Content Advisory Panel to develop the new Regents Examination in Global History and Geography II. This group has worked to develop claims, evidence and performance level indicators for the new assessment

as well as suggested question format. Surveys detailing the suggested format of the new assessment and prototype test items have been issued to solicit feedback from educators. The Content Advisory Panel has taken a lead role in analyzing this feedback and working to incorporate educator input into the new assessment design.

In order to ensure a gradual transition to the new Social Studies frameworks, and to continue the extensive role played by NYS educators in the development of the new Social Studies Regents Exams, the Global History and Geography Exam administered in June 2018, August 2018, and January 2019 would be based on the existing test framework, but revised to measure content only from the second year of the course consistent with the delineation made in the new frameworks (i.e., content covering approximately 1751 to the present). The transition year will allow for educators to adjust their curriculum and instruction to a model in which the scope and sequence in the second year of the course culminates in the Regents Exam. A similar transition the following year would apply to the U.S. History & Government Exam. The new Regents Examination in Global History & Geography II would first be offered in June 2019 and the Regents Examination in United States History & Government (2014 Framework) would first be offered in June 2020. Not only will this transition year allow educators a more thoughtful and gradual shift to the new frameworks, but this will also provide time for additional educator involvement in the development of these Regents Examinations to ensure they measure the new Frameworks with quality and fidelity. Additionally, this will ensure an extended period for notice and time for students to be prepared to take the new Regents Examinations in Social Studies.

The Department expects to continue to engage and inform educators regarding the ongoing development process and will issue guidance regarding the transition from the current Regents Examinations in Social Studies to the new Regents Examinations in the coming months. This will include guidance on which instruction and assessments (current vs. new Framework) may be offered to students, based on their grade level during the applicable school year.

In an effort to conform the current diploma requirements to reflect the implementation of this transition year in 2017-18 and provide flexibility to school districts and students while the Department moves to the new Global History & Geography II Regents examination in 2018-19, the proposed amendment does the following:

- shifts the requirement for students to take and pass the new Regents Examination in Global History & Geography II for graduation (instead of the current Regents Examination in Global History Geography I) by one year to allow for the creation of a transition year - so that it applies to students first entering grade nine in September 2017 and thereafter; and
- provides local school districts or schools with the discretion to determine to accept a passing score on either the Global History & Geography I Regents examination (with content ranging from approximately 1751 to the present) or the Global History & Geography II Regents examination for the purpose of satisfying the general requirements for a diploma under section 100.5 of the Commissioner's regulations during a period when both examinations (the current exam, but with content ranging from approximately 1751 to the present, and the new exam based on the new Social Studies Frameworks) are being administered (the June 2019, August 2019, January 2020 and June 2020 administrations).

3. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on local governments.

4. MINIMIZING ADVERSE IMPACT:

Because the Regents policy upon which the proposed amendment is based applies to all public school districts in the State, charter schools, and registered nonpublic schools in the State, to the extent that they offer instruction in the high school grades, 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:

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

Job Impact Statement

All students with disabilities must be held to high expectations and be provided meaningful opportunities to participate and progress in the general education curriculum to prepare them to graduate with a regular high school diploma. The majority of students with disabilities can meet the State's learning standards for graduation. However, there are some students who, because of their disabilities, are unable to demonstrate their proficiency on standard State assessments, even with testing accommodations. For these students, the proposed amendment requires a superintendent review option for eligible students to graduate with a local diploma. The proposed amendment requires the school principal and superintendent to review, document and provide a written certification/assurance that there is evidence that the student has otherwise met the

standards for graduation with a local high school diploma. Because ELA and math are foundation skills for which there must be a standardized measure of achievement, this option does require a minimum score on the ELA and math Regents exams. However, for the other three exams required for graduation, this option allows review of other documentation of proficiency when the student cannot pass one or more of these exams.

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.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Annual Professional Performance Reviews (APPR) of Classroom Teachers and Building Principals

I.D. No. EDU-27-16-00003-EP

Filing No. 589

Filing Date: 2016-06-20

Effective Date: 2016-06-20

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

Proposed Action: Amendment of sections 30-3.4 and 30-3.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1), (2), 3009(1) and 3012-d

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to provide districts and BOCES with additional options for measures to use in the student performance category and greater flexibility in scoring observations in the observation category. It also seeks to clarify that the Department may require changes to a collective bargaining agreement in a corrective action plan subject to collective bargaining under Article 14 of the Civil Service Law and that teacher/principal improvement plans are required to negotiated, to the extent required under Article 14 of the Civil Service Law.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(4-a), would be the September 12-13, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the November meeting, would be September 28, 2016, the date a Notice of Adoption would be published in the State Register.

Emergency action at the May 2016 Regents meeting is therefore necessary for the preservation of the general welfare in order to immediately adopt revisions to the proposed amendment to provide immediate notice to districts of the additional allowable measures in the student performance category, the increased flexibility in scoring observations in the observation category and to clarify the collective bargaining requirements surrounding teacher/principal improvement plans and to clarify that corrective action plans may require changes to collective bargaining agreements, subject to negotiation under Article 14 of the Civil Service Law, while they are negotiating their annual professional performance review plans under Education Law § 3012-d for the 2016-2017 school year.

Subject: Annual Professional Performance Reviews (APPR) of classroom teachers and building principals.

Purpose: To provide hardship Waiver from Independent Evaluator Requirement.

Text of emergency/proposed rule: 1. Clause (b) of subparagraph (i) of paragraph (2) of subdivision (d) of section 30-3.4 of the Rules of the Board of Regents shall be amended, effective June 20, 2016, to read as follows:

(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; *or in cases where a hardship waiver is granted by the department pursuant to subclause (2) of this subparagraph, a second observation shall be conducted as prescribed in subclause (2).* 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) . . .

(2) Commencing with the 2016-2017 school year, a school district may apply to the Department for a hardship waiver on an annual basis, in a timeframe and manner prescribed by the commissioner, if the school district believes that compliance with this clause would create an undue burden on the school district in one or more of the following areas: compliance with the independent evaluator requirement would result in financial hardship; the district lacks professionally trained staff to comply with the independent evaluator requirement; the district has a large number of teachers; and/or compliance with the independent evaluator requirement could impact safety and management of a building. A hardship waiver granted by the Department under this subclause shall excuse, but not prohibit, school districts from conducting observations by impartial independent trained evaluators for teachers who received a rating of highly effective, effective, or developing in the preceding school year (e.g., school districts would be excused, but not prohibited, from conducting observations by impartial independent trained evaluators for the 2016-2017 school year for teachers who receive a rating of highly effective, effective, or developing for the 2015-2016 school year; school districts would be required to conduct observations by impartial independent trained evaluators for the 2016-2017 school year for, at a minimum, teachers who receive a rating of ineffective for the 2015-2016 school year). For teachers who are excused from the impartial independent trained evaluator requirement pursuant to a hardship waiver granted by the Department under this subclause, school districts shall conduct a second observation, provided that such second observation may be conducted by the building principal/supervisor or any individual selected and trained by the school district. The two observations for such teachers could be performed by the same individual. As part of its hardship waiver request, a school district shall submit a plan for conducting observations by the building principal or other individual selected and trained by the school district in lieu of the impartial independent trained evaluator subcomponent. For the other teachers in the district who must still receive a second observation by an impartial, independent trained evaluator (teachers who, at a minimum, received an ineffective rating in the preceding school year), the district must submit a plan for conducting such observations. Once a hardship waiver is approved by the Department, it shall be considered part of the school district's annual professional performance review plan for such school year.

2. Subparagraph (ii) of paragraph (1) of subdivision (d) of section 30-3.5 of the Rules of the Board of Regents shall be amended, effective June 20, 2016, to read as follows:

(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; or in cases where a hardship waiver is granted by the department pursuant to clause (b) of this subparagraph, a second school visit shall be conducted as prescribed in clause (b). 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) . . .

(b) Commencing with the 2016-2017 school year, a school district may apply to the Department for a hardship waiver on an annual basis, on a form and in a timeframe prescribed by the commissioner, if the school district believes that compliance with this clause would create an undue burden on the district in one or more of the following areas: compliance with the independent evaluator requirement would result in financial hardship; the district lacks professionally trained staff to comply with the independent evaluator requirement; the district has a large number of principals; and/or compliance with the independent evaluator requirement could impact safety and management of a building. A hardship waiver granted by the Department under this clause shall excuse, but not prohibit, school districts from conducting school visits by impartial independent trained evaluators for principals who received a rating of highly effective, effective, or developing in the preceding school year (e.g., school districts would be excused, but not prohibited, from conducting school visits by impartial independent trained evaluators for the 2016-2017 school year for principals who receive a rating of highly effective, effective, or developing for the 2015-2016 school year; school districts would be required to conduct school visits by impartial independent trained evaluators for the 2016-2017 school year for, at a minimum, principals who receive a rating of ineffective for the 2015-2016 school year). For principals who are excused from the impartial independent trained evaluator requirement pursuant to a hardship waiver granted by the Department

under this clause, school districts shall conduct a second school visit, provided that such second school visit may be conducted by the principal's supervisor or any individual selected and trained by the school district. The two school visits for such principals could be performed by the same individual. As part of its hardship waiver request, a school district shall submit a plan for conducting school visits by the principal's supervisor or other individual selected and trained by the school district in lieu of the impartial independent trained evaluator subcomponent. For the other principals in the district who must still receive a second school visit by an impartial, independent trained evaluator (principals who, at a minimum, received an ineffective rating in the preceding school year), the district must submit a plan for conducting such school visits. Once a hardship waiver is approved by the Department, it shall be considered part of the school district's annual professional performance review plan for such school year.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 17, 2016.

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is necessary to provide immediate notice to districts of the increased flexibility in the observation category by providing for a hardship waiver from the independent evaluator requirement, while they are negotiating their annual professional performance review plans under Education Law § 3012-d for the 2016-2017 school year.

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 Department implemented regulations to implement the new law in June 2015 and has revised those regulations over the course of the last year to provide school districts and BOCES with as much flexibility as possible to comply with the new law. Education Law § 3012-d(12) and the corresponding appropriation language require school districts to comply with the new law by September 1, 2016 in order to receive their State aid increases. The Department has received numerous concerns about the requirement for the use of independent evaluators in teacher observations and principal school visits, notwithstanding the fact that the Department revised the regulation in September 2015 to provide a hardship waiver for rural and single building school districts. In an effort to provide more flexibility to districts (particularly the large city school districts), the Department is proposing to revise the regulations even further to provide an additional hardship waiver from the independent evaluator requirement as follows:

The proposed amendment revises sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents to provide a hardship waiver to school districts and BOCES commencing with the 2016-2017 school year who

believe that compliance with the independent evaluator requirement would create an undue burden on the school district/BOCES in one or more of the following areas:

1. compliance with the independent evaluator requirement would result in financial hardship to the district or BOCES;
2. the district or BOCES lacks professionally trained staff to comply with the independent evaluator requirement;
3. the district or BOCES has a large number of teachers and principals; and/or
4. compliance with the independent evaluator requirement could impact safety and management of a building (e.g., would result in the principal being absent from the school building).

Any hardship waiver granted by the Department would excuse, but not prohibit, school districts/BOCES from conducting observations/school visits by impartial independent trained evaluators for teachers/principals who received an APPR rating of highly effective, effective, or developing in the preceding school year (e.g., school districts would be excused, but not prohibited, from conducting observations/school visits by impartial independent trained evaluators for the 2016-2017 school year for teachers/principals who receive an APPR rating of highly effective, effective, or developing for the 2015-2016 school year; teachers/principals who, at a minimum, receive an APPR rating of ineffective for the 2015-2016 school year would continue to be subject to the requirement for evaluation by an independent evaluator for the 2016-2017 school year APPR process). However, teachers/principals who are not subject to the independent evaluator requirement pursuant to the hardship waiver must still receive a second observation/school visit. The second observation/school visit may be conducted by the building principal/supervisor or any individual selected and trained by the school district or BOCES. The two observations/school visits for such teachers/principals could be performed by the same individual.

As part of its hardship waiver request, a school district will be required to submit a plan for conducting observations/school visits by the building principal/supervisor or other trained administrators and for conducting the second observation/school visit by the building principal/supervisor or by an individual selected and trained by the school district or BOCES. For the other teachers/principals in the school district/BOCES who must still receive a second observation/school visit by an impartial, independent trained evaluator (those who, at a minimum, receive an APPR rating of ineffective in the preceding school year), the district/BOCES must submit a plan for conducting such observations/school visits. Once a hardship waiver is approved by the Department, it shall be considered part of the school district's annual professional performance review plan for such school year.

4. COSTS:

a. Costs to State government: The amendment provides districts and BOCES with greater flexibility in their implementation of Education Law § 3012-d and does not impose any costs on State government, including the State Education Department, beyond those costs imposed by the statute.

b. Costs to local government: Education Law § 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 amendment provides districts and BOCES with greater flexibility in their implementation of Education Law section 3012-d and does not impose any costs on local government, beyond those costs imposed by the statute.

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:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

The proposed amendment is necessary to provide districts and BOCES greater flexibility in their implementation of Education Law § 3012-d and, therefore, no alternatives were considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

The annual hardship waiver will be available commencing with the 2016-2017 school year.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of proposed rule is to provide annual hardship waivers

from the independent evaluator requirement for annual professional performance reviews for school districts and BOCES commencing with the 2016-2017 school year for school districts who believe that compliance with the independent evaluator requirement would create an undue burden on the school district/BOCES.

Any hardship waiver granted by the Department would excuse, but not prohibit, school districts/BOCES from conducting observations/school visits by impartial independent trained evaluators for teachers/principals who received an APPR rating of highly effective, effective, or developing in the preceding school year (e.g., school districts would be excused, but not prohibited, from conducting observations/school visits by impartial independent trained evaluators for the 2016-2017 school year for teachers/principals who receive an APPR rating of highly effective, effective, or developing for the 2015-2016 school year; teachers/principals who, at a minimum, receive an APPR rating of ineffective for the 2015-2016 school year would continue to be subject to the requirement for evaluation by an independent evaluator for the 2016-2017 school year APPR process). However, teachers/principals who are not subject to the independent evaluator requirement pursuant to the hardship waiver must still receive a second observation/school visit.

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 689 school districts and 37 boards of cooperative educational services (BOCES) in the State.

2. COMPLIANCE REQUIREMENTS:

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 Department implemented regulations to implement the new law in June 2015 and has revised those regulations over the course of the last year to provide school districts and BOCES with as much flexibility as possible to comply with the new law. Education Law § 3012-d(12) and the corresponding appropriation language require school districts to comply with the new law by September 1, 2016 in order to receive their State aid increases. The Department has received numerous concerns about the requirement for the use of independent evaluators in teacher observations and principal school visits, notwithstanding the fact that the Department revised the regulation in September 2015 to provide a hardship waiver for rural and single building school districts. In an effort to provide more flexibility to districts (particularly the large city school districts), the Department is proposing to revise the regulations even further to provide an additional hardship waiver from the independent evaluator requirement as follows:

The proposed amendment revises sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents to provide a hardship waiver to school districts and BOCES commencing with the 2016-2017 school year who believe that compliance with the independent evaluator requirement would create an undue burden on the school district/BOCES in one or more of the following areas:

1. compliance with the independent evaluator requirement would result in financial hardship to the district or BOCES;
2. the district or BOCES lacks professionally trained staff to comply with the independent evaluator requirement;
3. the district or BOCES has a large number of teachers and principals; and/or
4. compliance with the independent evaluator requirement could impact safety and management of a building (e.g., would result in the principal being absent from the school building).

Any hardship waiver granted by the Department would excuse, but not prohibit, school districts/BOCES from conducting observations/school visits by impartial independent trained evaluators for teachers/principals who received an APPR rating of highly effective, effective, or developing in the preceding school year (e.g., school districts would be excused, but not prohibited, from conducting observations/school visits by impartial independent trained evaluators for the 2016-2017 school year for teachers/principals who receive an APPR rating of highly effective, effective, or developing for the 2015-2016 school year; teachers/principals who, at a minimum, receive an APPR rating of ineffective for the 2015-2016 school year would continue to be subject to the requirement for evaluation by an independent evaluator for the 2016-2017 school year APPR process). However, teachers/principals who are not subject to the independent evaluator requirement pursuant to the hardship waiver must still receive a second observation/school visit. The second observation/school visit may be conducted by the building principal/supervisor or any individual selected and trained by the school district or BOCES. The two observations/school visits for such teachers/principals could be performed by the same individual.

As part of its hardship waiver request, a school district will be required to submit a plan for conducting observations/school visits by the building principal/supervisor or other trained administrators and for conducting the second observation/school visit by the building principal/supervisor or by an individual selected and trained by the school district or BOCES. For the other teachers/principals in the school district/BOCES who must still receive a second observation/school visit by an impartial, independent trained evaluator (those who, at a minimum, receive an APPR rating of ineffective in the preceding school year), the district/BOCES must submit a plan for conducting such observations/school visits. Once a hardship waiver is approved by the Department, it shall be considered part of the school district's annual professional performance review plan for such school year.

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:

There are no additional costs imposed by the proposed amendment, beyond those imposed by statute.

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 Summary of the Regulatory Impact Statement submitted herewith.

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to provide districts and BOCES with greater flexibility in implementing the provisions of Education Law § 3012-d. Because Education Law § 3012-d applies to all school districts and BOCES in the State, the Department did not establish differing compliance or reporting requirements or timetables or exempt schools in rural areas from coverage by the proposed amendment.

7. LOCAL GOVERNMENT PARTICIPATION:

The proposed amendment is submitted in direct response to feedback and comments provided by various stakeholder groups, including representatives of school districts and BOCES State-wide. Such stakeholder groups have consistently requested greater flexibility in implementing the provisions of Education Law § 3012-d in the areas addressed by the proposed amendment.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed 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:

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 Department implemented regulations to implement the new law in June 2015 and has revised those regulations over the course of the last year to provide school districts and BOCES with as much flexibility as possible to comply with the new law. Education Law § 3012-d(12) and the corresponding appropriation language require school districts to comply with the new law by September 1, 2016 in order to receive their State aid increases. The Department has received numerous concerns about the requirement for the use of independent evaluators in teacher observations and principal school visits, notwithstanding the fact that the Department revised the regulation in September 2015 to provide a hardship waiver for rural and single building school districts. In an effort to provide more flexibility to districts (particularly the large city school districts), the Department is proposing to revise the regulations even further to provide an additional hardship waiver from the independent evaluator requirement as follows:

The proposed amendment revises sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents to provide a hardship waiver to school districts and BOCES commencing with the 2016-2017 school year who believe that compliance with the independent evaluator requirement would create an undue burden on the school district/BOCES in one or more of the following areas:

1. compliance with the independent evaluator requirement would result in financial hardship to the district or BOCES;
2. the district or BOCES lacks professionally trained staff to comply with the independent evaluator requirement;
3. the district or BOCES has a large number of teachers and principals; and/or

4. compliance with the independent evaluator requirement could impact safety and management of a building (e.g., would result in the principal being absent from the school building).

Any hardship waiver granted by the Department would excuse, but not prohibit, school districts/BOCES from conducting observations/school visits by impartial independent trained evaluators for teachers/principals who received an APPR rating of highly effective, effective, or developing in the preceding school year (e.g., school districts would be excused, but not prohibited, from conducting observations/school visits by impartial independent trained evaluators for the 2016-2017 school year for teachers/principals who receive an APPR rating of highly effective, effective, or developing for the 2015-2016 school year; teachers/principals who, at a minimum, receive an APPR rating of ineffective for the 2015-2016 school year would continue to be subject to the requirement for evaluation by an independent evaluator for the 2016-2017 school year APPR process). However, teachers/principals who are not subject to the independent evaluator requirement pursuant to the hardship waiver must still receive a second observation/school visit. The second observation/school visit may be conducted by the building principal/supervisor or any individual selected and trained by the school district or BOCES. The two observations/school visits for such teachers/principals could be performed by the same individual.

As part of its hardship waiver request, a school district will be required to submit a plan for conducting observations/school visits by the building principal/supervisor or other trained administrators and for conducting the second observation/school visit by the building principal/supervisor or by an individual selected and trained by the school district or BOCES. For the other teachers/principals in the school district/BOCES who must still receive a second observation/school visit by an impartial, independent trained evaluator (those who, at a minimum, receive an APPR rating of ineffective in the preceding school year), the district/BOCES must submit a plan for conducting such observations/school visits. Once a hardship waiver is approved by the Department, it shall be considered part of the school district's annual professional performance review plan for such school year.

3. COSTS:

The proposed amendment will not impose any additional costs beyond those imposed by, or inherent in, the statute.

4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to provide districts and BOCES with greater flexibility in their implementation of Education Law § 3012-d. Because Education Law § 3012-d applies to all school districts and BOCES in the State, the Department did not prescribe differing compliance or reporting requirements for rural areas of the State.

5. RURAL AREA PARTICIPATION:

The proposed amendment provides districts and BOCES with greater flexibility in their implementation of Education Law § 3012-d and Subpart 30-3 of the Rules of the Board of Regents. The proposed amendments are submitted in response, in part, to comments received from rural school districts and BOCES.

The Department has solicited comments on the proposed amendment from the Rural Area Advisory Council, whose members live or work in rural areas of this State.

Job Impact Statement

The purpose of proposed rule is to provide annual hardship waivers from the independent evaluator requirement for annual professional performance reviews for school districts and BOCES commencing with the 2016-2017 school year for school districts who believe that compliance with the independent evaluator requirement would create an undue burden on the school district/BOCES.

Any hardship waiver granted by the Department would excuse, but not prohibit, school districts/BOCES from conducting observations/school visits by impartial independent trained evaluators for teachers/principals who received an APPR rating of highly effective, effective, or developing in the preceding school year (e.g., school districts would be excused, but not prohibited, from conducting observations/school visits by impartial independent trained evaluators for the 2016-2017 school year for teachers/principals who receive an APPR rating of highly effective, effective, or developing for the 2015-2016 school year; teachers/principals who, at a minimum, receive an APPR rating of ineffective for the 2015-2016 school year would continue to be subject to the requirement for evaluation by an independent evaluator for the 2016-2017 school year APPR process). However, teachers/principals who are not subject to the independent evaluator requirement pursuant to the hardship waiver must still receive a second observation/school visit.

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.

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

Superintendent Determination As to Academic Proficiency for Certain Students with Disabilities to Graduate with a Local Diploma

I.D. No. EDU-27-16-00004-EP

Filing No. 590

Filing Date: 2016-06-20

Effective Date: 2016-07-01

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

Proposed Action: Amendment of section 100.5(a) 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) and 309 (not subdivided)

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

Specific reasons underlying the finding of necessity: In order to continue the extensive role played by NYS educators in the development of the new Social Studies Regents Exams, the first administrations of the new Regents Examination in Global History & Geography II will be shifted a year to allow for a transition year and will first be offered in June 2019. In effort to conform the current social studies examination requirements for a high diploma under section 100.5 of the Commissioner's regulations to reflect this shift and to provide some flexibility to districts during this transition period, the proposed amendment does the following:

- shifts the requirement for students to take and pass the new Regents Examination in Global History & Geography II examination for graduation (instead of the prior Regents examination in global history and geography) for an additional year- so that it applies to students first entering grade nine on or after September 2017; and
- provides districts with flexibility during the transition period to the new Social Studies Regents examination. For the June 2019, August 2019, January 2020 and June 2020 administrations of the social studies Regents examinations, the proposed amendment provides local school districts or schools with discretion to determine whether to accept a passing score on the Global History & Geography I Regents examination (with content ranging from approximately 1751 to the present) or the Global History & Geography Regents examination II, or either examination, for the purpose of satisfying the general requirements for a diploma under section 100.5 of the Commissioner's regulations; in addition to accepting a passing score on the Regents examination in U.S history and government.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 12-13, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 28, 2016, the date a Notice of Adoption would be published in the State Register. However, the current regulations require students who are entering grade nine on or after September 1, 2016 to take and pass the new Regents Examination in Global History & Geography II examination.

Therefore, emergency action is necessary at the June 2016 Regents meeting for the preservation of the general welfare in order to ensure that students who are entering grade nine on or after September 1, 2016 are on notice of the shift in implementation of the new Social Studies Regents examination and of the new diploma requirements that will be required of them so that they can adequately prepare for these new examination requirements.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 12-13, 2016 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Superintendent determination as to academic proficiency for certain students with disabilities to graduate with a local diploma.

Purpose: To expand the safety net options for students with disabilities to graduate with local diplomas when certain conditions are met.

Text of emergency/proposed rule: Paragraph (5) of subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective July 1, 2016, to read as follows:

- (5) State assessment system.

(i) Except as otherwise provided in clause (f) of this subparagraph and subparagraphs (ii), (iii) and (iv) of this paragraph, all students shall demonstrate attainment of the New York State learning standards:

- (a) ...
(b) ...
(c) United States history and government:

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

(3) for students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma pursuant to this section in June 2015 and thereafter, by passing one of the following assessments:

(i) the Regents examination in United States history and government; or

(ii) *except as otherwise provided in item (iv)*, the Regents examination in global history and geography (for students first entering grade nine prior to September [2016] 2017);

(iii) *except as otherwise provided in item (iv)*, the Regents examination in global history and geography II (1750 to present) (for students first entering grade nine in September [2016] 2017 and thereafter);

(iv) *at the discretion of the applicable local school district or school, the Regents examination in global history and geography or the Regents examination in global history and geography II, for students who take and pass such assessments during the June 2019, August 2019, January 2020 and June 2020 administrations of these assessments; or*

[iii] (v) a department-approved alternative to either item

(i) [or], (ii), (iii) or (iv) of this subclause; or

- (4) ...
(5) ...

(d) ...

(e) Global history and geography:

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

(4) for students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma pursuant to this section in June 2015 and thereafter, by passing one of the following assessments:

(i) the Regents examination in United States history and government; or

(ii) *except as otherwise provided in item (iv)*, the Regents examination in global history and geography (for students first entering grade nine prior to September [2016] 2017);

(iii) *except as otherwise provided in item (iv)*, the Regents examination in global history and geography II (1750 to present) (for students first entering grade nine in September [2016] 2017 and thereafter);

(iv) *at the discretion of the applicable local school district or school, the Regents examination in global history and geography or the Regents examination in global history and geography II, for students who take and pass such assessments during the June 2019, August 2019, January 2020 and June 2020 administrations of these assessments; or*

[iii] (v) a department-approved alternative to either item

(i) [or], (ii), (iii) or (iv) of this subclause; or

- (iii) ...

(f) ...

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 17, 2016.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 148, Albany, NY 12234, (518) 474-8966, email: legal@nysed.gov

Data, views or arguments may be submitted to: Angelica Infante-Greene, Deputy Commissioner for Instructional Support, New York State Education Department, 2M West, 89 Washington Avenue, Albany, NY 12234, (518) 474-5510, email: nysedp12@nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents 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 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

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

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

Education Law section 215 authorizes the Regents and the Commissioner to require school districts to prepare and submit reports containing such information as they may prescribe.

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents.

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.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to a transition period to the new Regents Examination in Global History & Geography II.

3. NEEDS AND BENEFITS:

The Office of State Assessment has been working closely with members of the Content Advisory Panel to develop the new Regents Examination in Global History and Geography II. This group has worked to develop claims, evidence and performance level indicators for the new assessment as well as suggested question format. Surveys detailing the suggested format of the new assessment and prototype test items have been issued to solicit feedback from educators. The Content Advisory Panel has taken a lead role in analyzing this feedback and working to incorporate educator input into the new assessment design.

In order to ensure a gradual transition to the new Social Studies frameworks, and to continue the extensive role played by NYS educators in the development of the new Social Studies Regents Exams, the Global History and Geography Exam administered in June 2018, August 2018, and January 2019 would be based on the existing test framework, but revised to measure content only from the second year of the course consistent with the delineation made in the new frameworks (i.e., content covering approximately 1751 to the present). The transition year will allow for educators to adjust their curriculum and instruction to a model in which the scope and sequence in the second year of the course culminates in the Regents Exam. A similar transition the following year would apply to the U.S. History & Government Exam. The new Regents Examination in Global History & Geography II would first be offered in June 2019 and the Regents Examination in United States History & Government (2014 Framework) would first be offered in June 2020. Not only will this transition year allow educators a more thoughtful and gradual shift to the new frameworks, but this will also provide time for additional educator involvement in the development of these Regents Examinations to ensure they measure the new Frameworks with quality and fidelity. Additionally, this will ensure an extended period for notice and time for students to be prepared to take the new Regents Examinations in Social Studies.

The Department expects to continue to engage and inform educators regarding the ongoing development process and will issue guidance regarding the transition from the current Regents Examinations in Social Studies to the new Regents Examinations in the coming months. This will include guidance on which instruction and assessments (current vs. new Framework) may be offered to students, based on their grade level during the applicable school year.

In an effort to conform the current diploma requirements to reflect the implementation of this transition year in 2017-18 and provide flexibility to school districts and students while the Department moves to the new Global History & Geography II Regents examination in 2018-19, the proposed amendment does the following:

- shifts the requirement for students to take and pass the new Regents Examination in Global History & Geography II for graduation (instead of the current Regents Examination in Global History Geography I) by one year to allow for the creation of a transition year - so that it applies to students first entering grade nine in September 2017 and thereafter; and
- provides local school districts or schools with the discretion to determine to accept a passing score on either the Global History & Geog-

raphy I Regents examination (with content ranging from approximately 1751 to the present) or the Global History & Geography II Regents examination for the purpose of satisfying the general requirements for a diploma under section 100.5 of the Commissioner's regulations during a period when both examinations (the current exam, but with content ranging from approximately 1751 to the present, and the new exam based on the new Social Studies Frameworks) are being administered (the June 2019, August 2019, January 2020 and June 2020 administrations).

4. COSTS:

- (a) Costs to State: none.
- (b) Costs to local governments: none.
- (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 amendment is necessary to implement enacted by the Board of Regents relating to the new Regents Examination in Global History & Geography II and does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment delays the requirement for students to take and pass the new Regents Examination in Global History & Geography II examination for graduation (instead of the prior Regents examination in global history and geography) for an additional year- so that it applies to students first entering grade nine on or after September 2017. It also provides flexibility for school districts during a transition period which includes the June 2019, August 2019, January 2020 and June 2020 administrations, by allowing school districts the discretion to determine whether to accept a passing score on the Global History & Geography I Regents examination or the Global History & Geography Regents examination II, or either examination, for the purpose of satisfying the general requirements for a diploma under section 100.5 of the Commissioner's regulations; in addition to accepting a passing score on the Regents examination in U.S history and government.

6. PAPERWORK:

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

7. DUPLICATION:

The proposed rule does not duplicate any existing State or federal requirements.

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed rule is necessary to implement Regents policy relating to delaying the requirement for students to take and pass the new Regents Examination in Global History & Geography II examination for graduation. The proposed rule also provides flexibility for school districts during the transition period to the new Social Studies Regents examination.

9. FEDERAL STANDARDS:

There are no related federal standards in this area.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties can achieve compliance with the proposed rule by its effective date. The first administrations of the new Regents Examination in Global History & Geography II will be offered in June 2019. For the transition period which will include the June 2019, August 2019, January 2020 and June 2020 administrations, school districts will have discretion to determine whether to accept a passing score on the Global History & Geography I Regents examination or the Global History & Geography Regents examination II, or either examination, for the purpose of satisfying the general requirements for a diploma under section 100.5 of the Commissioner's regulations; in addition to accepting a passing score on the Regents examination in U.S history and government.

Regulatory Flexibility Analysis

(a) Small businesses:

In order to continue the extensive role played by NYS educators in the development of the new Social Studies Regents Exams, the first administrations of the new Regents Examination in Global History & Geography II will be shifted a year to allow for a transition year and will first be offered in June 2019. In effort to conform the current social studies examination requirements for a high diploma under section 100.5 of the Commissioner's regulations to reflect this shift and to provide some flexibility to districts during this transition period, the proposed amendment does the following:

- shifts the requirement for students to take and pass the new Regents Examination in Global History & Geography II examination for graduation (instead of the prior Regents examination in global history and geography) for an additional year- so that it applies to students first entering grade nine on or after September 2017; and
- provides districts with flexibility during the transition period to the new Social Studies Regents examination. For the June 2019, August 2019, January 2020 and June 2020 administrations of the social studies Regents examinations, the proposed amendment provides local school districts or schools with discretion to determine whether to accept a passing score on

the Global History & Geography I Regents examination (with content ranging from approximately 1751 to the present) or the Global History & Geography Regents examination II, or either examination, for the purpose of satisfying the general requirements for a diploma under section 100.5 of the Commissioner's regulations; in addition to accepting a passing score on the Regents examination in U.S. history and government.

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.

(b) 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 and nonpublic schools that are authorized to issue regular high school diplomas with respect to State assessments and high school graduation and diploma requirements.

2. COMPLIANCE REQUIREMENTS:

The Office of State Assessment has been working closely with members of the Content Advisory Panel to develop the new Regents Examination in Global History and Geography II. This group has worked to develop claims, evidence and performance level indicators for the new assessment as well as suggested question format. Surveys detailing the suggested format of the new assessment and prototype test items have been issued to solicit feedback from educators. The Content Advisory Panel has taken a lead role in analyzing this feedback and working to incorporate educator input into the new assessment design.

In order to ensure a gradual transition to the new Social Studies frameworks, and to continue the extensive role played by NYS educators in the development of the new Social Studies Regents Exams, the Global History and Geography Exam administered in June 2018, August 2018, and January 2019 would be based on the existing test framework, but revised to measure content only from the second year of the course consistent with the delineation made in the new frameworks (i.e., content covering approximately 1751 to the present). The transition year will allow for educators to adjust their curriculum and instruction to a model in which the scope and sequence in the second year of the course culminates in the Regents Exam. A similar transition the following year would apply to the U.S. History & Government Exam. The new Regents Examination in Global History & Geography II would first be offered in June 2019 and the Regents Examination in United States History & Government (2014 Framework) would first be offered in June 2020. Not only will this transition year allow educators a more thoughtful and gradual shift to the new frameworks, but this will also provide time for additional educator involvement in the development of these Regents Examinations to ensure they measure the new Frameworks with quality and fidelity. Additionally, this will ensure an extended period for notice and time for students to be prepared to take the new Regents Examinations in Social Studies.

The Department expects to continue to engage and inform educators regarding the ongoing development process and will issue guidance regarding the transition from the current Regents Examinations in Social Studies to the new Regents Examinations in the coming months. This will include guidance on which instruction and assessments (current vs. new Framework) may be offered to students, based on their grade level during the applicable school year.

In an effort to conform the current diploma requirements to reflect the implementation of this transition year in 2017-18 and provide flexibility to school districts and students while the Department moves to the new Global History & Geography II Regents examination in 2018-19, the proposed amendment does the following:

- shifts the requirement for students to take and pass the new Regents Examination in Global History & Geography II for graduation (instead of the current Regents Examination in Global History Geography I) by one year to allow for the creation of a transition year - so that it applies to students first entering grade nine in September 2017 and thereafter; and

- provides local school districts or schools with the discretion to determine to accept a passing score on either the Global History & Geography I Regents examination (with content ranging from approximately 1751 to the present) or the Global History & Geography II Regents examination for the purpose of satisfying the general requirements for a diploma under section 100.5 of the Commissioner's regulations during a period when both examinations (the current exam, but with content ranging from approximately 1751 to the present, and the new exam based on the new Social Studies Frameworks) are being administered (the June 2019, August 2019, January 2020 and June 2020 administrations).

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements on local governments. Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Regents policy relating to delaying the requirement for students to take and pass the new Regents Examination in Global History & Geography II examination for graduation. The proposed rule also provides flexibility for local governments during the transition period to the new Social Studies Regents examination.

Because the Regents policy upon which the proposed amendment is based applies to all school districts in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt school districts or charter schools from coverage by the proposed amendment.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, from the chief school officers of the five big city school districts and from 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 rule is necessary to implement long-range Regents policy providing for a transition to the new Regents Examination in Global History & Geography II. The first administration of the new Regents Examination in Global History & Geography II will be in June 2019m and provides flexibility to school districts through the June 2020 administration. 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 Emergency Adoption 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, charter schools, and registered nonpublic schools in the State, to the extent that they offer instruction in the high school grades, 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 Office of State Assessment has been working closely with members of the Content Advisory Panel to develop the new Regents Examination in Global History and Geography II. This group has worked to develop claims, evidence and performance level indicators for the new assessment as well as suggested question format. Surveys detailing the suggested format of the new assessment and prototype test items have been issued to solicit feedback from educators. The Content Advisory Panel has taken a lead role in analyzing this feedback and working to incorporate educator input into the new assessment design.

In order to ensure a gradual transition to the new Social Studies frameworks, and to continue the extensive role played by NYS educators in the development of the new Social Studies Regents Exams, the Global History and Geography Exam administered in June 2018, August 2018, and January 2019 would be based on the existing test framework, but revised to measure content only from the second year of the course consistent with the delineation made in the new frameworks (i.e., content covering approximately 1751 to the present). The transition year will allow for educators to adjust their curriculum and instruction to a model in which the scope and sequence in the second year of the course culminates in the Regents Exam. A similar transition the following year would apply to the U.S. History & Government Exam. The new Regents Examination in Global History & Geography II would first be offered in June 2019 and the Regents Examination in United States History & Government (2014 Framework) would first be offered in June 2020. Not only will this transition year allow educators a more thoughtful and gradual shift to the new frameworks, but this will also provide time for additional educator involvement in the development of these Regents Examinations to ensure they measure the new Frameworks with quality and fidelity. Additionally, this will ensure an extended period for notice and time for students to be prepared to take the new Regents Examinations in Social Studies.

The Department expects to continue to engage and inform educators regarding the ongoing development process and will issue guidance

regarding the transition from the current Regents Examinations in Social Studies to the new Regents Examinations in the coming months. This will include guidance on which instruction and assessments (current vs. new Framework) may be offered to students, based on their grade level during the applicable school year.

In an effort to conform the current diploma requirements to reflect the implementation of this transition year in 2017-18 and provide flexibility to school districts and students while the Department moves to the new Global History & Geography II Regents examination in 2018-19, the proposed amendment does the following:

- shifts the requirement for students to take and pass the new Regents Examination in Global History & Geography II for graduation (instead of the current Regents Examination in Global History Geography I) by one year to allow for the creation of a transition year - so that it applies to students first entering grade nine in September 2017 and thereafter; and
- provides local school districts or schools with the discretion to determine to accept a passing score on either the Global History & Geography I Regents examination (with content ranging from approximately 1751 to the present) or the Global History & Geography II Regents examination for the purpose of satisfying the general requirements for a diploma under section 100.5 of the Commissioner's regulations during a period when both examinations (the current exam, but with content ranging from approximately 1751 to the present, and the new exam based on the new Social Studies Frameworks) are being administered (the June 2019, August 2019, January 2020 and June 2020 administrations).

3. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on local governments.

4. MINIMIZING ADVERSE IMPACT:

Because the Regents policy upon which the proposed amendment is based applies to all public school districts in the State, charter schools, and registered nonpublic schools in the State, to the extent that they offer instruction in the high school grades, 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:

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

Job Impact Statement

In order to continue the extensive role played by NYS educators in the development of the new Social Studies Regents Exams, the first administrations of the new Regents Examination in Global History & Geography II will be shifted a year to allow for a transition year and will first be offered in June 2019. In effort to conform the current social studies examination requirements for a high diploma under section 100.5 of the Commissioner's regulations to reflect this shift and to provide some flexibility to districts during this transition period, the proposed amendment does the following:

- shifts the requirement for students to take and pass the new Regents Examination in Global History & Geography II examination for graduation (instead of the prior Regents examination in global history and geography) for an additional year- so that it applies to students first entering grade nine on or after September 2017; and
- provides districts with flexibility during the transition period to the new Social Studies Regents examination. For the June 2019, August 2019, January 2020 and June 2020 administrations of the social studies Regents examinations, the proposed amendment provides local school districts or schools with discretion to determine whether to accept a passing score on the Global History & Geography I Regents examination (with content ranging from approximately 1751 to the present) or the Global History & Geography Regents examination II, or either examination, for the purpose of satisfying the general requirements for a diploma under section 100.5 of the Commissioner's regulations; in addition to accepting a passing score on the Regents examination in U.S history and government.

Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

District-Wide School Safety Plans and Building-Level Emergency Response Plans

I.D. No. EDU-27-16-00005-EP

Filing No. 609

Filing Date: 2016-06-21

Effective Date: 2016-07-01

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

Proposed Action: Amendment of section 155.17 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1), (2), 807 and 2801-a, as amended by L. 2016, ch. 54

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement certain provisions of Part B of Chapter 54 of the Laws of 2016, which amended sections 807 and 2801-a of the Education Law, effective July 1, 2016 relating to fire and emergency drills, district-wide school safety plans, and building-level emergency response plans.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 12-13, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting, would be September 28, 2016, the date a Notice of Adoption would be published in the State Register. However, the provisions of Part B of Chapter 54 of the Laws of 2016 become effective on July 1, 2016. Therefore, emergency action is necessary at the June 2016 Regents meeting for the preservation of the general welfare in order to immediately implement the amendments to fire and emergency drills, district-wide school safety plans, and building-level emergency response plans in accordance with Part B of Chapter 54 of the Laws of 2016, and thus ensure the timely implementation of the statute on its effective date.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 12-13, 2016 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: District-wide school safety plans and building-level emergency response plans.

Purpose: The purpose of the proposed rule is to implement the provisions of part B of chapter 54 of the Laws of 2016.

Text of emergency/proposed rule: 1. Section 155.17 of the Regulations of the Commissioner of Education is amended, effective July 1, 2016, as follows:

§ 155.17

[(a) ...]

[b] (a) Development of school safety plans. Every board of education of a school district, every board of cooperative educational services and county vocational education and extension board and the chancellor of the City School District of the City of New York shall adopt by July 1, 2001, and shall update by [July 1st of each succeeding year] July 1 for the 2002-2003 through the 2015-2016 school years and by September 1 for the 2016-2017 school year and each subsequent September 1 thereafter, a comprehensive district-wide school safety plan and building-level [school safety] emergency response plans regarding crisis intervention and emergency response and management, provided that in the City School District of the City of New York, such plans shall be adopted by the chancellor of the city school district. Such plans shall be developed by a district-wide school safety team and a building-level [school safety] emergency response team, as such terms are defined in subdivision [(c)] (b) of this section, and shall be in a form developed by the commissioner in consultation with the Division of Criminal Justice Services, the superintendent of the State Police and any other appropriate State agencies. [A school district having only one school building shall develop a single building-level school safety plan, which shall also fulfill all requirements for development of a district-wide plan to insure the safety and health of children and staff and to insure integration and coordination with similar emergency

planning at the municipal, county and State levels.] Each *district-wide school safety plan* and *building-level emergency response plan* shall be reviewed by the appropriate school safety team on at least an annual basis, and updated as needed.

[(c)] (b) Definitions. As used in this section:

(1) ...

(2) ...

(3) ...

(4) Emergency means a situation, including but not limited to a disaster[,] that requires immediate action, occurs unpredictably, and poses a threat of injury or loss of life to students or school personnel or of severe damage to school property.

(5) ...

(6) ...

(7) ...

(8) ...

(9) ...

(10) *Lock-down* means to immediately clear the hallways, lock and/or barricade doors, hide from view, and remain silent while readying a plan of evacuation as a last resort. *Lock-down* will only end upon physical release from the room or secured area by law enforcement.

[(10)] (11) Building-level [school safety] *emergency response plan* means a building-specific school emergency response plan that addresses crisis intervention, emergency response and management at the building level and has the contents prescribed in paragraph [(e)](c)(2) of this section.

[(11)] (12) Building-level [school safety] *emergency response team* means a building-specific team appointed by the building principal, in accordance with regulations or guidelines prescribed by the board of education, the chancellor in the case of New York City, or other governing body. The building-level *emergency response team* is responsible for the designation of the *emergency response team* and the development of the *building-level emergency response plan* and its required components. The *building-level emergency response team* shall include, but not be limited to, representatives of teacher, administrator, and parent organizations, school safety personnel, other school personnel, community members, local law enforcement officials, local ambulance, *fire officials* or other emergency response agencies, and any other representatives the school board, chancellor or other governing body deems appropriate.

[(12)] (13) District-wide school safety plan means a comprehensive, multi-hazard school safety plan that covers all school buildings of the school district, BOCES or county vocational education and extension board, that addresses crisis intervention, emergency response and management at the district level and has the contents prescribed in paragraph [(e)](c)(1) of this section.

[(13)] (14) District-wide school safety team means a district-wide team appointed by the board of education, the chancellor in the case of New York City, or other governing board. The district-wide team shall include, but not be limited to, representatives of the school board, [student,] teacher, administrator, and parent organizations, school safety personnel and other school personnel. *At the discretion of the board of education, or the chancellor in the case of the City of New York, a student may be allowed to participate on the safety team, provided however, that no portion of a confidential building-level emergency response plan shall be shared with such student nor shall such student be present where details of a confidential building-level emergency response plan or confidential portions of a district-wide emergency response strategy are discussed.*

[(14)] (15) Emergency response team means a building-specific team designated by the building-level [school safety] *emergency response team* that [includes appropriate] is comprised of school personnel, [local] law enforcement officials, *fire officials*, and representatives from local, regional and/or State emergency response agencies and assists the school community in responding to a [serious] violent incident or emergency. In a school district in a city having a population of more than one million inhabitants, such emergency response team may be created on the district-level with building-level participation, and such district shall not be required to establish a unique team for each of its schools.

[(15)] (16) Post-incident response team means a building-specific team designated by the building-level [school safety] *emergency response team* that includes appropriate school personnel, medical personnel, mental health counselors and others who can assist the school community in coping with the aftermath of a [serious] violent incident or emergency. In a school district in a city having a population of more than one million inhabitants, such post-incident response team may be created on the district-level with building-level participation, and such district shall not be required to establish a unique team for each of its schools.

[(16)] (17) ...

[(17)] (18) ...

[(d)] ...

[(e)] (c) District-wide [School] school safety plans and building-level

emergency response plans. District-wide school safety plans and building-level [school safety] *emergency response plans* shall be designed to prevent or minimize the effects of [serious] violent incidents and emergencies and to facilitate the coordination of schools and school districts with local and county resources in the event of such incidents or emergencies.

(1) District-wide school safety plans. A district-wide school safety plan shall be developed by the district-wide school safety team and shall include, but not be limited to:

[(i)] ...

[(ii)] ...

[(iii)] (i) policies and procedures for responding to implied or direct threats of violence by students, teachers, other school personnel and visitors to the school, *including threats by students against themselves, which for the purposes of this subdivision shall include suicide;*

[(iv)] (ii) ...

[(v)] (iii) ...

[(vi)] (iv) ...

[(vii)] (v) ...

[(viii)] (vi) ...

[(ix)] (vii) ...

[(x)] (viii) ...

[(xi)] (ix) ...

(x) policies and procedures for contacting parents, guardians or persons in parental relation to an individual student of the district in the event of an implied or direct threat of violence by such student against themselves, which for the purposes of this subdivision shall include suicide;

[(xii)] (xi) ...

[(xiii)] (xii) ...

[(xiv)] (xiii) policies and procedures for annual multi-hazard school safety training for staff and students, *provided that the district must certify to the commissioner that all staff have undergone annual training by September 15, 2016 and each subsequent September 15 thereafter on the building-level emergency response plan which must include components on violence prevention and mental health, provided further that new employees hired after the start of the school year shall receive such training within 30 days of hire or as part of the district's existing new hire training program, whichever is sooner.*

[(xv)] (xiv) ...

[(xvi)] (xv) ...

[(xvii)] (xvi) ...

[(xviii)] (xvii) ...

[(xix)] (xviii) in the case of a school district, except in a school district in a city having more than one million inhabitants, a system for informing all educational agencies within such school district of a disaster[.]; and

(xix) the designation of the superintendent, or superintendent's designee, as the district chief emergency officer whose duties shall include, but not be limited to:

(a) coordination of the communication between school staff, law enforcement, and other first responders;

(b) lead the efforts of the district-wide school safety team in the completion and yearly update of the district-wide school safety plan and the coordination of the district-wide plan with the building-level emergency response plans;

(c) ensure staff understanding of the district-wide school safety plan;

(d) ensure the completion and yearly update of building-level emergency response plans for each school building;

(e) assist in the selection of security related technology and development of policies for the use of such technology;

(f) coordinate appropriate safety, security, and emergency training for district and school staff, including required training in the emergency response plan; and

(g) ensure the conduct of required evacuation and lock-down drills in all district buildings as required by Education Law section 807;

(h) ensure the completion and yearly update of building-level emergency response plans by the dates designated by the commissioner.

(2) [School] *Building-level emergency response plan.* A [school] building-level emergency response plan shall be developed by the building-level [school safety] *emergency response team, shall be kept confidential, including but not limited to the floor plans, blueprints, schematics or other maps of the immediate surrounding area, and shall not be disclosed except to authorized department or school staff, and law enforcement officers, and shall include the following elements:*

(i) policies and procedures for the [safe evacuation of students, teachers, other school personnel and visitors to the school in the event of a serious violent incident or other emergency which may occur before, during or after school hours] *response to emergency situations, such as those*

requiring evacuation, sheltering, and lock-down, which shall include, at a minimum, the description of plans of action for evacuation [and], sheltering, lock-down, evacuation routes and shelter sites, and procedures for addressing medical needs, transportation and emergency notification to persons in parental relation to a student;

(ii) ...
 (iii) [procedures for assuring that crisis response, fire and law enforcement officials have access to] floor plans, blueprints, schematics or other maps of the school interior, school grounds and road maps of the immediate surrounding area;

(iv) ...
 (v) ...
 (vi) coordination of the [school safety] building-level emergency response plan with the statewide plan for disaster mental health services to assure that the school has access to Federal, State and local mental health resources in the event of a violent incident;

(vii) procedures for an annual review of the building-level emergency response plan and the conduct of drills and other exercises to test components of the building-level emergency response plan, including the use of tabletop exercises, in coordination with local, [and] county, and state emergency responders and preparedness officials;

(viii) ...
 (ix) ...

(3) Each board of education, chancellor or other governing body shall make each district-wide [and building-level school] safety plan available for public comment at least 30 days prior to its adoption[, provided that only a summary of each building-level emergency response plan shall be made available for public comment]. Such district-wide [and building-level] plans may be adopted by the school board only after at least one public hearing that provides for the participation of school personnel, parents, students and any other interested parties. Each district shall file a copy of its district-wide [comprehensive] safety plan with the commissioner and all amendments to such plan shall be filed with the commissioner no later than 30 days after their adoption. Each board of education, chancellor or other governing body or officer shall ensure that a copy of each building-level [safety] emergency response plan and any amendments thereto, [shall be] is filed with the appropriate local law enforcement agency and with the State Police within 30 days of its adoption, but no later than October 15, 2016 and each subsequent October 15 thereafter. Building-level emergency response plans shall be confidential and shall not be subject to disclosure under article six of the Public Officers Law or any other provision of law.

[(4) ...]
 [(f)] (d) ...
 [(g)] (e) ...
 [(h)] (f) ...
 [(i)] (g) ...
 [(j)] (h) Fire and Emergency Drills. Each school district and board of cooperative educational services shall, at least once every school year, and where possible in cooperation with local county emergency preparedness plan officials, conduct one test of its [emergency plan or its] emergency response procedures under each of its building-level emergency response [school safety] plans, including sheltering, lock-down, or early dismissal, at a time not to occur more than 15 minutes earlier than the normal dismissal time.

(1) ...
 (2) ...
 (3) ...
 [(k)] (i) ...
 [(l)] (j) ...
 [(m)] (k) ...

(1) ...
 (2) ...
 (3) ...
 [(k)] (i) ...
 [(l)] (j) ...
 [(m)] (k) ...

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 18, 2016.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 138, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Renee Rider, Assistant Commissioner for Student Supports, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, (518) 474-4817, email: regcomments@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 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents.

Part B of Chapter 54 of the Laws of 2016 amended sections 2801-a and 807 of the Education Law, effective July 1, 2016, relating to district-wide school safety plans, building-level emergency response plans, and fire and emergency drills.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutory authority and is necessary to implement Education Law sections 807 and 2801-a, as amended by Chapter 54 of the Laws of 2016.

3. NEEDS AND BENEFITS:

Over the past few decades, threats to schools have evolved and recent events have demonstrated that there are people who seek to commit violent acts in schools. Whether this threat is posed by a member of the school community or an outside individual or group, school staff must be prepared to take immediate protective action in the event of such an incident. Historically, school emergency planning focused on fire safety through regular fire drills in schools. As a result of good planning and modern safety systems such as fire alarms and sprinklers, fire-related fatalities in public schools are now nearly nonexistent in the United States. However, it has become clear that for schools to be equally as prepared for a possible occurrence of violence, expanded emergency response drills, including lock-down drills, are essential.

Due to the importance of school preparedness in an emergency, the New York State School Safety Improvement Team—which is composed of staff from the Governor's Office of Public Safety, the New York State Police, the New York State Education Department, the New York State Division of Homeland Security and Emergency Services, and the New York State Division of Criminal Justice Services—recommended statutory amendments to improve the scope of school emergency response planning. These changes included reducing the required number of annual fire drills as well as adding a new requirement that schools conduct four annual lock-down drills. As such, the 2016-17 enacted State budget included amendments to Education Law Sections 2801-a and 807 (Chapter 54 of the Laws of 2016). These amendments will take effect on July 1, 2016. Highlights of these changes are below.

Amendments to Education Law § 2801-a: School Safety Plans

- In addition to the existing notification requirements in the event of a violent incident, the statute now requires that each district develop policies and procedures for contacting parents, guardians, or persons in a parental relation to a student in the event of an implied or direct threat of violence by a student against themselves, including threat of suicide.

- The statute includes a new requirement that each district submit certification to NYSED that all district and school staff have undergone annual training on the emergency response plan, and that the school safety training include components on violence prevention and mental health. New employees hired after the start of the school year must receive training within 30 days of hire. The Department will require schools to certify that all school staff received this training by September 15th of each school year, or within 30 days of hire, whichever is sooner.¹

- The amendments require district-wide safety plans to include the designation of a chief emergency officer who is responsible for coordinating communication between staff and law enforcement and first responders and for ensuring staff understanding of the district-level safety plan. The chief emergency officer shall also be responsible for ensuring completion and yearly update of building-level emergency response plans. The building-level emergency response plan shall be kept confidential and shall not be disclosed except to authorized department staff and law enforcement officers.²

- The amendments require that building-level emergency response plans include policies and procedures for response to emergency situations such as those requiring evacuation, sheltering and lock-down (evacuation routes, shelter sites, procedures for addressing medical needs, transportation and emergency notification of parents and guardians). The building-level emergency response team is now expanded to include fire officials, and at the discretion of the board, a student may be permitted to participate in the school safety team, but may not have access to confidential building-level emergency response plans or be present where confidential building-level emergency response plans are being discussed.

- The statute eliminated the provision allowing single building districts to create a building-level emergency response plan that contains all aspects

of the district plan. However, the statute now authorizes the Commissioner, in consultation with the Superintendent of State Police, to develop an appeals process from duplicative requirements of district-wide school safety plans for districts with only one school building.

- The amendments require the district-wide safety plans to be made available for public comment, however, to comply with the confidentiality provisions of this section, public comment is no longer required for the summary of the building-level emergency response plan.

- Additional technical amendments were made to the statute to eliminate certain expired provisions relating to Project SAVE Legislation, making the language throughout more consistent and easier to understand.

- The amendments removed the Commissioner's authority to provide a waiver from the requirements of this section for a two-year period for schools that had plans in substantial compliance prior to the effective date of this section.

Amendments to Education Law §§ 807(1-a), 807 (b): Fire and Emergency Drills

- The amendments expanded fire drill requirements to also include emergency drills to prepare students to be able to respond appropriately in the event of a sudden emergency.

- The statute now requires twelve drills be conducted each school year, four of which must be lock-down drills, the remaining eight are required to be evacuation drills.

- There is still a requirement that eight of the required twelve drills must be completed in the first half of the school year. However, the date of completion has been changed from December 1 to December 31 of each school year.

The statute now explicitly requires schools to conduct lock-down drills, which are essential, because they prepare students and staff to respond to the highest level of threat with the most urgent action and the least margin for error. The goal is to have schools conduct drills where they immediately clear hallways, lock doors and take positions out of sight to practice their ability to put the building into a protective posture as quickly as possible. These emergency measures allow time for responding law enforcement to arrive on scene and neutralize the threat. If possible, law enforcement should be involved in the drills to help prepare students and staff for their interactions and release from lock-down by uniformed officers. However, law enforcement involvement is not required by the new legislative mandate. Other protective actions such as lock-out or shelter in place are emergency actions that are usually preceded by some degree of warning time and do not require the immediate response necessary for a lock-down. While the school should be well versed in their lock-out and shelter in place protocols, lock-down is the only type of protective action that is specifically required by the statute.

The proposed amendment makes conforming changes to section 155.17 of the Commissioner's regulations to implement these new statutory requirements.

4. COSTS:

(a) Costs to State: none.

(b) Costs to local governments: in general, the proposed rule does not impose any costs beyond those inherent in Chapter 54 of the Laws of 2016.

(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:

Consistent with the statute, in addition to the existing plan submission requirements, school district must now submit certification to NYSED that all staff members have completed annual training on the emergency response plan, which must include components on violence prevention and mental health. It is anticipated that this certification will be added to the existing method for submission of the school safety plans and will not be overly burdensome.

Consistent with the statute, the proposed rule now also requires district-wide safety plans to include the designation of a chief emergency officer who is responsible for coordinating communication between staff and law enforcement and first responders and for ensuring staff understanding of the district-level safety plan. The chief emergency officer shall also be responsible for ensuring completion and yearly update of building-level emergency response plans.

6. PAPERWORK:

The proposed rule does not impose any new paperwork requirements beyond the existing statutory requirements, upon local government, including school districts or BOCES. Consistent with the statute, in addition to the existing plan submission requirements, school district must now submit certification to NYSED that all staff members have completed annual training on the emergency response plan, which must include components on violence prevention and mental health. It is anticipated that this certification will be added to the existing method for submission of the school safety plans and will not be overly burdensome.

7. DUPLICATION:

The proposed rule does not duplicate any existing State or Federal requirements, and is necessary to implement Education Law sections 807 and 2801-a as amended by Chapter 54 of the Laws of 2016. The proposed rule makes certain amendments to the current requirement for district-wide school safety plans and building level emergency response plans.

8. ALTERNATIVES:

The proposed rule is necessary to implement Education Law sections 807 and 2801-a as amended by Chapter 54 of the Laws of 2016 by its effective date of July 1, 2016. There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties can achieve compliance with the proposed rule by its effective date. Additionally, the proposed rule provides that, beginning with the 2016-2017 school year, school districts have until September 1st of each year to update existing district-wide school safety plans and building-level emergency response plans. The proposed rule provides school districts with additional time to make and implement any changes to the district-wide school safety plans and building-level emergency response plans because the prior rule required such updates to be completed by July 1st of each year.

¹ Certification that staff has received training as indicated in #2 will be collected as part of the Basic Educational Data System (BEDS) collection beginning in October 2016.

² Information relating to the designation of the Chief Emergency Officer will be collected as part of BEDS beginning in October 2016.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed rule is to implement the provisions of Part B of Chapter 54 of the Laws of 2016, which amended sections 807 and 2801-a of the Education Law, effective July 1, 2016 relating to fire and emergency drills, district-wide school safety plans, and building-level emergency response plans. 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.

(b) Local governments:

1. EFFECT OF RULE:

The rule applies to all school districts, BOCES, county vocational education and extension boards required to adopt and implement comprehensive district-wide school safety plans and building-level emergency response plans as required by Education Law 2801-a.

Over the past few decades, threats to schools have evolved and recent events have demonstrated that there are people who seek to commit violent acts in schools. Whether this threat is posed by a member of the school community or an outside individual or group, school staff must be prepared to take immediate protective action in the event of such an incident. Historically, school emergency planning focused on fire safety through regular fire drills in schools. As a result of good planning and modern safety systems such as fire alarms and sprinklers, fire-related fatalities in public schools are now nearly nonexistent in the United States. However, it has become clear that for schools to be equally as prepared for a possible occurrence of violence, expanded emergency response drills, including lock-down drills, are essential.

Due to the importance of school preparedness in an emergency, the New York State School Safety Improvement Team—which is composed of staff from the Governor's Office of Public Safety, the New York State Police, the New York State Education Department, the New York State Division of Homeland Security and Emergency Services, and the New York State Division of Criminal Justice Services—recommended statutory amendments to improve the scope of school emergency response planning. These changes included reducing the required number of annual fire drills as well as adding a new requirement that schools conduct four annual lock-down drills. As such, the 2016-17 enacted State budget included amendments to Education Law Sections 2801-a and 807 (Chapter 54 of the Laws of 2016). These amendments will take effect on July 1, 2016. Highlights of these changes are below.

Amendments to Education Law § 2801-a: School Safety Plans

1. In addition to the existing notification requirements in the event of a violent incident, the statute now requires that each district develop policies and procedures for contacting parents, guardians, or persons in a parental relation to a student in the event of an implied or direct threat of violence by a student against themselves, including threat of suicide.

2. The statute includes a new requirement that each district submit certification to NYSED that all district and school staff have undergone annual training on the emergency response plan, and that the school safety

training include components on violence prevention and mental health. New employees hired after the start of the school year must receive training within 30 days of hire. The Department will require schools to certify that all school staff received this training by September 15th of each school year, or within 30 days of hire, whichever is sooner.¹

3. The amendments require district-wide safety plans to include the designation of a chief emergency officer who is responsible for coordinating communication between staff and law enforcement and first responders and for ensuring staff understanding of the district-level safety plan. The chief emergency officer shall also be responsible for ensuring completion and yearly update of building-level emergency response plans. The building-level emergency response plan shall be kept confidential and shall not be disclosed except to authorized department staff and law enforcement officers.²

4. The amendments require that building-level emergency response plans include policies and procedures for response to emergency situations such as those requiring evacuation, sheltering and lock-down (evacuation routes, shelter sites, procedures for addressing medical needs, transportation and emergency notification of parents and guardians). The building-level emergency response team is now expanded to include fire officials, and at the discretion of the board, a student may be permitted to participate in the school safety team, but may not have access to confidential building-level emergency response plans or be present where confidential building-level emergency response plans are being discussed.

5. The statute eliminated the provision allowing single building districts to create a building-level emergency response plan that contains all aspects of the district plan. However, the statute now authorizes the Commissioner, in consultation with the Superintendent of State Police, to develop an appeals process from duplicative requirements of district-wide school safety plans for districts with only one school building.

6. The amendments require the district-wide safety plans to be made available for public comment, however, to comply with the confidentiality provisions of this section, public comment is no longer required for the summary of the building-level emergency response plan.

7. Additional technical amendments were made to the statute to eliminate certain expired provisions relating to Project SAVE Legislation, making the language throughout more consistent and easier to understand.

8. The amendments removed the Commissioner's authority to provide a waiver from the requirements of this section for a two-year period for schools that had plans in substantial compliance prior to the effective date of this section.

Amendments to Education Law §§ 807(1-a), 807 (b): Fire and Emergency Drills

1. The amendments expanded fire drill requirements to also include emergency drills to prepare students to be able to respond appropriately in the event of a sudden emergency.

2. The statute now requires twelve drills be conducted each school year, four of which must be lock-down drills, the remaining eight are required to be evacuation drills.

3. There is still a requirement that eight of the required twelve drills must be completed in the first half of the school year. However, the date of completion has been changed from December 1 to December 31 of each school year.

The statute now explicitly requires schools to conduct lock-down drills, which are essential, because they prepare students and staff to respond to the highest level of threat with the most urgent action and the least margin for error. The goal is to have schools conduct drills where they immediately clear hallways, lock doors and take positions out of sight to practice their ability to put the building into a protective posture as quickly as possible. These emergency measures allow time for responding law enforcement to arrive on scene and neutralize the threat. If possible, law enforcement should be involved in the drills to help prepare students and staff for their interactions and release from lock-down by uniformed officers. However, law enforcement involvement is not required by the new legislative mandate. Other protective actions such as lock-out or shelter in place are emergency actions that are usually preceded by some degree of warning time and do not require the immediate response necessary for a lock-down. While the school should be well versed in their lock-out and shelter in place protocols, lock-down is the only type of protective action that is specifically required by the statute. The proposed amendment makes conforming changes to section 155.17 of the Commissioner's regulations to implement these new statutory requirements.

2. COMPLIANCE REQUIREMENTS:

The proposed rule does not impose any additional compliance requirements upon local governments beyond those required by the statute. Consistent with the statute, the proposed rule updates the required components of existing district-wide school safety plans and building-level emergency response plans (formerly referred to as building-level school safety plans). In addition to the existing plan submission requirements, school district must now submit certification to NYSED that all staff members have

completed annual training on the emergency response plan, which must include components on violence prevention and mental health. It is anticipated that this certification will be added to the existing method for submission of the school safety plans and will not be overly burdensome.

The proposed rule now requires district-wide safety plans to include the designation of a chief emergency officer who is responsible for coordinating communication between staff and law enforcement and first responders and for ensuring staff understanding of the district-level safety plan. The chief emergency officer shall also be responsible for ensuring completion and yearly update of building-level emergency response plans.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

In general, the proposed rule does not impose any costs beyond those inherent in Chapter 54 of the Laws of 2016. Consistent with the statute, school districts, boards of cooperative educational services, and county vocational education and extension boards are responsible for adopting and updating comprehensive district-wide school safety plans and building-level emergency response plans. The proposed rule updates the required components of district-wide school safety plans and building-level emergency response plans (formerly referred to as building-level school safety plans). In addition to the existing plan submission requirements, school district must now submit certification to NYSED that all staff members have completed annual training on the emergency response plan, which must include components on violence prevention and mental health. It is anticipated that this certification will be added to the existing method for submission of the school safety plans and will not be overly burdensome. There may be costs associated with the training; however, costs are anticipated to be minimal and capable of being absorbed by districts using existing staff and resources.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any additional costs or technological requirements on local governments.

6. MINIMIZING ADVERSE IMPACT:

Consistent with the statute, the proposed rule is necessary to implement Education Law sections 807 and 2801-a as amended by Chapter 54 of the Laws of 2016 by its effective date of July 1, 2016.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, from the chief school officers of the five big city school districts and from 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 rule is necessary to implement the statutory requirements of Part B of Chapter 54 of the Laws of 2016, 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.

¹ Certification that staff has received training as indicated in #2 will be collected as part of the Basic Educational Data System (BEDS) collection beginning in October 2016.

² Information relating to the designation of the Chief Emergency Officer will be collected as part of BEDS beginning in October 2016.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to school districts, boards of cooperative educational services (BOCES), and county vocational education and extension boards, 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:

Over the past few decades, threats to schools have evolved and recent events have demonstrated that there are people who seek to commit violent acts in schools. Whether this threat is posed by a member of the school community or an outside individual or group, school staff must be prepared to take immediate protective action in the event of such an incident. Historically, school emergency planning focused on fire safety through regular fire drills in schools. As a result of good planning and modern

safety systems such as fire alarms and sprinklers, fire-related fatalities in public schools are now nearly nonexistent in the United States. However, it has become clear that for schools to be equally as prepared for a possible occurrence of violence, expanded emergency response drills, including lock-down drills, are essential.

Due to the importance of school preparedness in an emergency, the New York State School Safety Improvement Team—which is composed of staff from the Governor’s Office of Public Safety, the New York State Police, the New York State Education Department, the New York State Division of Homeland Security and Emergency Services, and the New York State Division of Criminal Justice Services—recommended statutory amendments to improve the scope of school emergency response planning. These changes included reducing the required number of annual fire drills as well as adding a new requirement that schools conduct four annual lock-down drills. As such, the 2016-17 enacted State budget included amendments to Education Law Sections 2801-a and 807 (Chapter 54 of the Laws of 2016). These amendments will take effect on July 1, 2016. Highlights of these changes are below.

Amendments to Education Law § 2801-a: School Safety Plans

- In addition to the existing notification requirements in the event of a violent incident, the statute now requires that each district develop policies and procedures for contacting parents, guardians, or persons in a parental relation to a student in the event of an implied or direct threat of violence by a student against themselves, including threat of suicide.

- The statute includes a new requirement that each district submit certification to NYSED that all district and school staff have undergone annual training on the emergency response plan, and that the school safety training include components on violence prevention and mental health. New employees hired after the start of the school year must receive training within 30 days of hire. The Department will require schools to certify that all school staff received this training by September 15th of each school year, or within 30 days of hire, whichever is sooner.¹

- The amendments require district-wide safety plans to include the designation of a chief emergency officer who is responsible for coordinating communication between staff and law enforcement and first responders and for ensuring staff understanding of the district-level safety plan. The chief emergency officer shall also be responsible for ensuring completion and yearly update of building-level emergency response plans. The building-level emergency response plan shall be kept confidential and shall not be disclosed except to authorized department staff and law enforcement officers.²

- The amendments require that building-level emergency response plans include policies and procedures for response to emergency situations such as those requiring evacuation, sheltering and lock-down (evacuation routes, shelter sites, procedures for addressing medical needs, transportation and emergency notification of parents and guardians). The building-level emergency response team is now expanded to include fire officials, and at the discretion of the board, a student may be permitted to participate in the school safety team, but may not have access to confidential building-level emergency response plans or be present where confidential building-level emergency response plans are being discussed.

- The statute eliminated the provision allowing single building districts to create a building-level emergency response plan that contains all aspects of the district plan. However, the statute now authorizes the Commissioner, in consultation with the Superintendent of State Police, to develop an appeals process from duplicative requirements of district-wide school safety plans for districts with only one school building.

- The amendments require the district-wide safety plans to be made available for public comment, however, to comply with the confidentiality provisions of this section, public comment is no longer required for the summary of the building-level emergency response plan.

- Additional technical amendments were made to the statute to eliminate certain expired provisions relating to Project SAVE Legislation, making the language throughout more consistent and easier to understand.

- The amendments removed the Commissioner’s authority to provide a waiver from the requirements of this section for a two-year period for schools that had plans in substantial compliance prior to the effective date of this section.

Amendments to Education Law §§ 807(1-a), 807 (b): Fire and Emergency Drills

- The amendments expanded fire drill requirements to also include emergency drills to prepare students to be able to respond appropriately in the event of a sudden emergency.

- The statute now requires twelve drills be conducted each school year, four of which must be lock-down drills, the remaining eight are required to be evacuation drills.

- There is still a requirement that eight of the required twelve drills must be completed in the first half of the school year. However, the date of completion has been changed from December 1 to December 31 of each school year.

The statute now explicitly requires schools to conduct lock-down drills, which are essential, because they prepare students and staff to respond to the highest level of threat with the most urgent action and the least margin for error. The goal is to have schools conduct drills where they immediately clear hallways, lock doors and take positions out of sight to practice their ability to put the building into a protective posture as quickly as possible. These emergency measures allow time for responding law enforcement to arrive on scene and neutralize the threat. If possible, law enforcement should be involved in the drills to help prepare students and staff for their interactions and release from lock-down by uniformed officers. However, law enforcement involvement is not required by the new legislative mandate. Other protective actions such as lock-out or shelter in place are emergency actions that are usually preceded by some degree of warning time and do not require the immediate response necessary for a lock-down. While the school should be well versed in their lock-out and shelter in place protocols, lock-down is the only type of protective action that is specifically required by the statute.

The proposed amendment makes conforming changes to section 155.17 of the Commissioner’s regulations to implement these new statutory requirements. The proposed rule does not impose any additional professional services requirements on entities in rural areas.

3. COMPLIANCE COSTS:

In general, the proposed rule does not impose any costs beyond those inherent in Chapter 54 of the Laws of 2016. Consistent with the statute, school districts, boards of cooperative educational services, and county vocational education and extension boards are responsible for adopting and updating comprehensive district-wide school safety plans and building-level emergency response plans. The proposed rule updates the required components of district-wide school safety plans and building-level emergency response plans (formerly referred to as building-level school safety plans). In addition to the existing plan submission requirements, school district must now submit certification to NYSED that all staff members have completed annual training on the emergency response plan, which must include components on violence prevention and mental health. It is anticipated that this certification will be added to the existing method for submission of the school safety plans and will not be overly burdensome. There may be costs associated with the training; however, costs are anticipated to be minimal and capable of being absorbed by districts using existing staff and resources.

Consistent with the statute, the proposed rule now also requires district-wide safety plans to include the designation of a chief emergency officer who is responsible for coordinating communication between staff and law enforcement and first responders and for ensuring staff understanding of the district-level safety plan. The chief emergency officer shall also be responsible for ensuring completion and yearly update of building-level emergency response plans.

4. MINIMIZING ADVERSE IMPACT:

Consistent with the statute, the proposed rule is necessary to implement Education Law sections 807 and 2801-a as amended by Chapter 54 of the Laws of 2016 by its effective date of July 1, 2016. Therefore, no alternatives were considered.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory requirements of Part B of Chapter 54 of the Laws of 2016, 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 Emergency Adoption published herewith, and must be received within 45 days of the State Register publication date of the Notice.

¹ Certification that staff has received training as indicated in #2 will be collected as part of the Basic Educational Data System (BEDS) collection beginning in October 2016.

² Information relating to the designation of the Chief Emergency Officer will be collected as part of BEDS beginning in October 2016.

Job Impact Statement

The purpose of the proposed rule is to implement the provisions of Part B of Chapter 54 of the Laws of 2016, which amended sections 807 and 2801-a of the Education Law, effective July 1, 2016 relating to fire and

emergency drills, district-wide school safety plans, and building-level emergency response plans. 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.

Department of Environmental Conservation

NOTICE OF EXPIRATION

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

Rule Making to Implement ECL 17-0826-a

I.D. No.	Proposed	Expiration Date
ENV-24-15-00013-P	June 17, 2015	June 16, 2016

Department of Financial Services

EMERGENCY RULE MAKING

Standard Financial Aid Award Information Sheet for Institutions of Higher Education

I.D. No. DFS-03-16-00003-E
Filing No. 584
Filing Date: 2016-06-16
Effective Date: 2016-06-16

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

Action taken: Addition of Part 421 to Title 3 NYCRR.

Statutory authority: Banking Law, section 9-w

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

Specific reasons underlying the finding of necessity: I determined that it is necessary for the preservation of the general welfare that this regulation be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Department of State.

This regulation is adopted as an emergency measure because time is of the essence. Banking Law Section 9-w requires schools to use a standard financial aid information letter in responding to all financial aid applicants for the 2016-2017 academic year and thereafter. Schools are currently sending award packages and the regulations provide important clarity for schools using the model financial aid information letter. An April 2016 amendment to Banking Law Section 9-w, which took effect immediately, requires amended emergency regulations. In order for schools to comply with Banking Law Section 9-w, these rules are being re-adopted on an emergency basis.

No other publication or prior notice is required by statute.

Subject: Standard financial aid award information sheet for institutions of higher education.

Purpose: Provides guidance to institutions of higher education for the implementation of a financial aid award information sheet.

Text of emergency rule: Part 421

Financial Aid Award Information Sheet

§ 421.1 Scope and application of this Part

Section 9-w of the Banking Law authorizes the superintendent to adopt rules and regulations for the implementation of a standard financial aid award letter.

§ 421.2 Definitions

For purposes of this Part, unless otherwise stated herein, terms shall have the same meaning as set forth in section 601 of New York State Education Law.

§ 421.3 Content and Delivery of Financial Aid Award Information Sheet On or After May 15, 2016

(a) In responding to an incoming or prospective undergraduate student's financial aid application on or after May 15, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law shall provide the letter required in section 9-w of the Banking Law, hereby referred to as the "Financial Aid Award Information Sheet", in the form available at www.dfs.ny.gov/studentprotection.

(b) For purposes of the Financial Aid Award Information Sheet, the term "Campus" shall mean an institution affiliated with a single U.S. Department of Education Office of Postsecondary Education Identification code.

§ 421.4 Content and Delivery of Financial Aid Award Information Sheet Prior to May 15, 2016

(a) In responding to an incoming or prospective undergraduate student's financial aid application prior to May 15, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law shall provide the Financial Aid Award Information Sheet in accordance with section 421.3 of this Part or satisfy the requirements in subsections 421.4(b) and 421.4(c) of this Part.

(b) Beginning on or before February 1, 2016, and ending on or after September 1, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law that offers financial aid to undergraduate students shall publish online an "Interim Period Financial Aid Award Information Sheet" in the form available at www.dfs.ny.gov/studentprotection.

(c) In responding to an incoming or prospective undergraduate student's financial aid application before May 15, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law shall include in, or accompany with, the response a clear and conspicuous disclosure stating "Additional Information Including Estimated Cost of Attendance Can be Found On the Web Page Below" and setting forth the URL address of the webpage that includes a completed Interim Period Financial Aid Award Information Sheet. For responses to an incoming or prospective undergraduate student's financial aid application between January 1, 2016 and February 1, 2016, this disclosure shall be provided by February 1, 2016.

(d) For purposes of the Interim Period Financial Aid Award Information Sheet, the term "Campus" shall mean an institution affiliated with a single U.S. Department of Education Office of Postsecondary Education Identification code.

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. DFS-03-16-00003-EP, Issue of January 20, 2016. The emergency rule will expire August 14, 2016.

Text of rule and any required statements and analyses may be obtained from: Max Dubin, Department of Financial Services, One State Street, New York, NY 10004, (212) 480-7232, email: max.dubin@dfs.ny.gov

Regulatory Impact Statement

1. **Statutory Authority:** The Superintendent of Financial Services' ("Superintendent") authority for the promulgation of this rule derives from New York Banking Law § 9-w, which calls on the Superintendent to promulgate regulations implementing that section.

2. **Legislative Objectives:** The Legislature called on the Superintendent to issue this rule to implement New York Banking Law § 9-w, which requires all New York schools to use a uniform financial aid award letter. The Legislature mandated a uniform financial aid letter to give students a better understanding of the costs of a particular school and the options to pay for the education. The uniform letter will also help students to easily compare costs and financial aid options between schools.

3. **Needs and Benefits:** DFS consulted the New York State Higher Education Services Corporation for thoughts and challenges associated with implementing the form required in Banking Law § 9-w. The rule is required by New York Banking Law § 9-w. The rule provides needed guidance to institutions of higher education, including when and to whom schools must provide the financial aid award letter.

4. **Costs:** This rule does not create any additional costs to regulated parties or state and local governments. Any costs incurred by higher education institutions in implementing a standard financial aid award information sheet, including building any information technology infrastructure to generate and send the award sheets, were imposed by the Legislature by statute. No new costs are created by this rule, which simply implements New York Banking Law § 9-w.

5. **Local Government Mandates:** The rule does not create any new local government mandates.

6. **Paperwork:** There are no new paperwork requirements created by the rule.

7. Duplication: Some institutions of higher education have volunteered to, and in some cases are required, to use a standard student shopping sheet developed by the U.S. Department of Education when responding to financial aid applications. DFS consulted with U.S. Department of Education and designed a model shopping sheet that would meet federal and state requirements. New York schools already committed to using the federal form can add a supplement to their existing form to meet both requirements and avoid duplicative financial aid award information sheets.

8. Alternatives: No significant alternatives to the rule were considered.

9. Federal Standards: The rule does not exceed any federal standards.

10. Compliance Schedule: The rule should not take any time to implement. It has been previously proposed as a permanent rule and adopted on an emergency basis.

Regulatory Flexibility Analysis

The rule will not impose any new adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses and local governments. The rule implements Banking Law § 9-w. Some of the covered educational institutions may be small businesses. Any costs or compliance requirements were created statutorily by the Legislature and this rule does not create any additional costs or requirements.

Rural Area Flexibility Analysis

The rule will not impose any new adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The rule implements Banking Law § 9-w. Some of the covered educational institutions are located in rural areas. However, the rule does not impose any new costs or compliance requirements. Any costs or compliance requirements were created statutorily by the Legislature.

Job Impact Statement

The rule should have no adverse impact on jobs and employment opportunities in New York. The rule implements Banking Law § 9-w. It does not create any new burden or costs to businesses that are not already required by statute.

Assessment of Public Comment

The agency received no public comment.

(1) demonstrate a need for certification, such as New York State residence or employment opportunity;

(2) have successfully completed a course that meets or exceeds a curriculum based on the current department EMS certification guidelines;

(3) have successfully completed

(i) an out-of-state recognized or National Registry of Emergency Medical Technicians practical skills and written examination within 18 months of the date the application is received by the department; or

(ii) if a member or veteran of the United States Military, an approved medical training program from the Army, Navy, Air Force, Marines or Coast Guard that meets or exceeds current national emergency medical services education guidelines within three (3) years of the date the application is received by the department;

[(2)] (4) submit a [written request for New York State certification, including a copy of the out-of-state credentials and complete an application for certification on a form to be] complete application for reciprocal certification on forms provided by the department;

[(3)] (5) [pay in advance a] submit the filing fee of \$25 dollars for [certified first responder] emergency medical responder or emergency medical technician[-basic] certification or \$50 for [any other level] all other levels of certification;

[(4)] not have any convictions for any crime or crimes related to murder, manslaughter, assault, sexual abuse, theft, robbery, drug abuse, or sale of drugs or currently be under charges for such a crime unless the department finds that such conviction or charges do not demonstrate a present risk or danger to patients; and]

(6) if the applicant has been convicted of one or more criminal offenses, as defined in section 800.3(ak) of this part, be found eligible after a balancing of the factors set out in Article 23-A of the Correction Law. In accordance with that Article, no application for a license shall be denied by reason of the applicant having been previously convicted of one or more criminal offenses unless (i) there is a direct relationship between one or more of the previous criminal offenses and duties required of this certificate or (ii) certifying the applicant would involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public. In determining these questions, the department will look at all factors listed under New York State Correction Law Section 753;

(7) not have been found guilty or in violation, in any jurisdiction, of any other non-criminal offense or statutory and/or regulatory violation, as those terms are defined in section 800.3 of this Part, relating to patient safety unless the department determines such applicant would not involve an unreasonable risk to property or the safety or welfare of a specific individual or the general public; and

[(5)] (8) be at least eighteen years of age.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 800.12(a).

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqa@health.ny.gov

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

Department of Health

NOTICE OF ADOPTION

Reciprocal Emergency Medical Technician Certification Requirements

I.D. No. HLT-30-15-00007-A

Filing No. 612

Filing Date: 2016-06-21

Effective Date: 2016-07-06

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

Action taken: Amendment of section 800.12 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3002

Subject: Reciprocal Emergency Medical Technician Certification Requirements.

Purpose: To replace the emergency medical technician-intermediate category with the advanced emergency medical technician category.

Text of final rule: Section 800.12 of Part 800 is amended to read as follows:

800.12 Reciprocal Certification Requirements

(a) To qualify for New York State certification based on out-of-state emergency medical responder, emergency medical technician[-basic], advanced emergency medical technician [-intermediate], emergency medical technician-critical care, [or] emergency medical technician-paramedic, emergency medical services instructor certification or emergency medical services training credentials, a person must be currently certified or licensed by another state, the United States Military, or the National Registry of Emergency Medical Technicians, based on an out-of-state training program. The out-of-state [other state's] training must be equivalent to or more stringent than New York State training and examination requirements.

(b) The applicant must:

NOTICE OF ADOPTION

Protection Against Legionella

I.D. No. HLT-16-16-00007-A

Filing No. 613

Filing Date: 2016-06-21

Effective Date: 2016-07-06

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

Action taken: Addition of Part 4 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 225(5)(a)

Subject: Protection Against Legionella.

Purpose: To protect the public from the immediate threat posed by Legionella.

Substance of final rule: The following summarizes the purpose and impact of each section. The summary is for convenience, and it is not a substitute for the express terms of the regulation.

- 4-1.1 Scope.
 - o Provides that the regulation applies to all owners of cooling towers.
- 4-1.2 Definitions.
 - o This section defines key terms.
 - o In particular, a “cooling tower” is now defined as: “a cooling tower, evaporative condenser, fluid cooler or other wet cooling device that is capable of aerosolizing water, and that is part of, or contains, a recirculated water system and is incorporated into a building’s cooling process, an industrial process, a refrigeration system, or an energy production system.”
 - o The definition of “owner” is now defined as follows: “any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of, a cooling tower or the premises where the cooling tower is located. In all instances, the legal owner of the building shall be deemed an owner within the meaning of the Subpart. Further, where a tenant owns a cooling tower that services the tenant’s leased premises, the tenant is an “owner” within the meaning of this Subpart. Additionally, if a tenant does not own the cooling tower but has a lease or contractual arrangement to maintain the cooling tower, the tenant shall be deemed an agent having control of the cooling tower, and thus an “owner,” for purposes of this Subpart.”
- 4-1.3 Electronic registration and reporting.
 - o Requires owners of cooling towers to register such towers with the Department using a statewide electronic system. Required registration fields have been slightly revised.
 - o Establishes a schedule for routine Legionella culture sampling and analysis, which includes reporting intervals not exceeding 90 days.
 - o Requires reporting of certain events, including:
 - * last bacteriological culture sample collection date and result;
 - * last Legionella culture sample collection date and result;
 - * date of any required remedial action;
 - * last inspection date;
 - * last certification date;
 - * date of removal or permanent discontinued use of a cooling tower;
- and
 - * cooling tower system volume (including any piping, basin, and sump).
 - o The proposed regulations generally require reporting of certain events every 90 days. This is a change from the emergency regulations, which required reporting within 10 days.
 - o Affords public access to the statewide electronic system, as appropriate, and requires such system to be accessible and searchable to local health departments.
 - o Clarifies that where both a landlord and a tenant are considered “owners” of a cooling tower pursuant to Section 4-1.2, then either the owner or the tenant shall register the cooling tower. Both parties, however, are obligated to ensure that registration and reporting are completed.
- 4-1.4 Maintenance program and plan.
 - o Requires owners to obtain or update the maintenance program and plan for all operational cooling towers by September 1, 2016, and prior to the startup of newly installed cooling towers. The plan must include the following elements:
 - * A schedule for routine bacteriological culture sampling and analysis to assess microbiological activity. The proposed regulation establishes a new, minimum sampling requirement, in which such sampling and analysis must be conducted: (1) at intervals not to exceed 30 days while the cooling tower is in use; and (2) at additional times, as needed, to validate process adjustments. The component that specifies a minimum sampling interval is a new requirement.
 - * The emergency regulation contained a requirement for a schedule of routine Legionella culture sampling and analysis. The new regulation requires sampling within two weeks of seasonal start-up and thereafter at intervals not to exceed 90 days. In addition, the new regulation requires that year-round use towers be sampled at intervals not to exceed 90 days and within two weeks after start-up following maintenance. These are new requirements.
 - * Provisions for immediate Legionella culture sampling and analysis following specified conditions, such as power failure, loss of biocide of sufficient duration to allow for the growth of bacteria, and if the State or local health department determines that one or more cases of legionellosis is or may be associated with the tower. In addition to the conditions above, the proposed regulation describes conditions whereby the department or local health department may require sampling.
 - * Provisions requiring immediate and appropriate action, including any necessary remedial action, in response to bacteriological and Legionella culture analyses.
 - * Provisions requiring that any and all Legionella culture analysis must be performed in accordance with Section 4-1.5. This is a new requirement.
 - * Provisions for shutdown and for removing or permanently discontinuing use of a cooling tower. These are new requirements.
 - * Provisions requiring appropriate actions during idle conditions. This is a new requirement.
- * Provisions requiring cleaning and disinfection of a cooling tower that has been shut down without treatment for more than five days. This is a new requirement.
 - 4-1.5 Legionella culture analysis.
 - o Requires that Legionella culture analysis be performed by a laboratory that is approved to perform such analysis by the New York State Environmental Laboratory Approval Program (ELAP). This is a new requirement.
 - 4-1.6 Notification.
 - o Requires an owner of a cooling tower to notify the local health department within 24 hours of receipt of a Legionella culture sample result that exceeds 1,000 colony forming units per milliliter (CFU/mL). The owner must also notify the public of the test result in a manner determined by the local health department or by the department, if the department elects to determine the manner of public notification. This is a new requirement.
 - 4-1.7 Disinfection.
 - o Establishes qualifications of persons who may disinfect a cooling tower.
 - o Requires that the name and certification number of the applicator or the business name and registration number of the company providing the disinfection be maintained on-site in accordance with Section 4-1.9. This is a new requirement.
 - o Permits only biocide products registered by the New York State Department of Environmental Conservation for use in cooling towers or pesticidal devices in a USEPA registered establishment to be used in disinfection.
 - o Clarifies the terms “disinfect” and “disinfection” to mean the control of microorganisms or microbial growth. The term “disinfection” is also clarified to exclude the cleaning of a cooling tower through application of detergents, penetrants, brushes or other tools, high-powered water, or any other method that does not involve the use of a pesticide, as defined in 6 NYCRR Part 325.
 - 4-1.8 Inspection and certification.
 - o Inspection.
 - * Requires that all owners of cooling towers ensure that such towers are inspected prior to seasonal start up and at intervals not exceeding every 90 days while in use. Year-round towers shall be inspected at intervals not exceeding every 90 days and prior to start up following maintenance. The inspection requirement prior to start up is new.
 - o Certification.
 - * By November 1, 2016, and by November 1st of each year thereafter, the owner of a cooling tower must obtain a certification that the cooling tower has a maintenance program and plan, and that all activities within that plan or required by this Subpart were implemented.
 - o Reporting.
 - * All inspection findings, deficiencies, and corrective actions, and all certifications, must be reported to the owner. This section is new to the regulation.
 - 4-1.9 Recordkeeping.
 - o Describes the records and documentation that the owner must maintain onsite for at least three years. Such records must be made available to the department or local health department upon request.
 - 4-1.10 Enforcement.
 - o Provides that the department or local health department may require any owner to conduct Legionella culture sampling and analysis, following a determination, based upon epidemiologic or laboratory testing, that one or more cases of legionellosis are or may be associated with a cooling tower. This is a new provision.
 - o Permits an officer or employee of the department or local health department to enter onto any property to inspect a cooling tower for compliance with the requirements of this Subpart. The proposed regulation clarifies that such officers or employees may take water samples.
 - o Provides that a violation of any provision in this Subpart is subject to all civil and criminal penalties as provided for by law. Further, every day that an owner remains in violation of any provision constitutes a separate and distinct violation of such provision.
 - 4-1.11 Variances and waivers.
 - o Grants local health departments authority to issue variances from this regulation, upon approval of the New York State Department of Health. The local and State health department must be satisfied that the variance will not present a danger to public health.
 - o The department may also grant general or specific waivers where it is satisfied that a waiver will not present a danger to public health.
 - 4-1.12 Severability.
 - o Standard severability clause is included.
- Appendix 4-A
 - o This Appendix describes required responsive actions for Legionella culture test results. As compared to the emergency regulations, these regulations raise the threshold level for detecting Legionella in laboratory culture analyses, from ≥ 10 colony forming units per milliliter (CFU/mL) to ≥ 20 CFU/mL.

o Responsive actions have been updated and clarified. The term “acceptable improvement” was changed to an actual quantitative target of “< 20 CFU/mL.” Also, where an owner receives a laboratory Legionella culture analyses result ≥ 1000 CFU/mL, the owner must provide appropriate notifications per section 4-1.6.

o The footnotes for on-line decontamination and system decontamination were modified to allow the use of a halogen-based compounds (chlorine or bromine).

- 4-2.1 Scope.

o This Subpart addresses Legionella exposure in general hospitals and residential health care facilities (collectively, “covered facilities”). This area was addressed through section 4.11 of the emergency regulation.

- 4-2.2 Definitions.

o Defines key terms.

- 4-2.3 Environmental assessment.

o Requires covered facilities to perform an environmental assessment of the facility, using forms provided or approved by the department, no later than September 1, 2016, unless an environmental assessment was performed on or after September 1, 2015.

o Requires an annual update of the environmental assessment, and in specified conditions.

o Requires that copies of the completed environmental assessment form be retained in accordance with Section 4-2.6.

- 4-2.4 Sampling and Management Plan.

o Requires that all covered facilities adopt and implement a sampling and management plan for their potable water systems by December 1, 2016, and that new covered facilities must adopt such plan prior to providing services.

o In addition to any sampling required by the sampling plan, Legionella culture sampling and analysis of the potable water system must occur immediately, as directed by the department, where (1) the department determines that one or more cases of legionellosis are, or may be, associated with the facility; and (2) under any other condition specified by the department.

o The sampling and management plan must be reviewed and updated annually, and in specified conditions.

o The proposed regulation requires that the sampling and management plan and sampling results be retained in accordance with Section 4-2.6 of this Subpart.

- 4-2.5 Legionella culture analysis.

o Legionella culture analyses must be performed by a laboratory approved to perform such analyses by the New York State Environmental Laboratory Program (ELAP).

- 4-2.6 Recordkeeping.

o Specifies that all records related to the environmental assessment, sampling and management plan, and associated sampling results must be retained for three years and must be made available immediately to the department upon request.

- 4-2.7 Enforcement.

o Authorizes the department to conduct an assessment and/or a Legionella culture sampling and analysis of the potable water system at any time.

o Provides that where an owner of a covered facility does not comply with any provision contained within this Subpart, the department may determine that such condition constitutes a violation and may take such action as authorized by law. Further, each day an owner is in violation of a provision constitutes a separate and distinct violation.

- 4-2.8 Variances and waivers.

o Grants the department authority to issue variances and waivers from this regulation, subject to specified conditions.

- 4-2.9 Severability.

o Standard severability clause is included.

- Appendix 4-B

o This new appendix contains a table with comparison thresholds for routine Legionella culture sampling results. However, in the event that one or more cases of legionellosis are, or may be, associated with the facility, the sampling interpretation shall be in accordance with the direction of a qualified professional and the department.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 4-1.4, 4-1.6, 4-1.7, 4-1.8, 4-1.10, 4-2.4, 4-2.6 and Appendix 4-A&B.

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqa@health.ny.gov

Summary of Revised Regulatory Impact Statement

Needs and Benefits:

Legionellosis describes any illness caused by exposure to Legionella bacteria, including Legionnaire’s Disease and Pontiac Fever. Potential

sources of exposure to Legionella bacteria include water in the home, workplace, healthcare facilities or aerosol-producing devices in public places. Improper maintenance of cooling towers can contribute to the growth and dissemination of Legionella bacteria. Inadequate surveillance for Legionella bacteria in the potable water systems at general hospitals and residential health care facilities can also increase the risk of legionellosis.

Symptoms of legionellosis may include cough, shortness of breath, high fever, muscle aches, and headaches, and can result in pneumonia. Hospitalization is often required, and between 5 and 30% of cases are fatal. People at highest risk are those 50 years of age or older; current or former smokers; those with chronic lung diseases; those with weakened immune systems from diseases like cancer, diabetes, or kidney failure; and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005 and 2014 increased 323%, compared to those reported in the previous ten-year period.

Outbreaks of legionellosis have been associated with cooling towers, as well as with the potable water systems of general hospitals and residential health care facilities. Subpart 4-1 of these regulations establish requirements for cooling towers relating to: registration, reporting and record-keeping; testing; disinfection; maintenance; inspection; and certification of compliance. Subpart 4-2 of these regulations require general hospitals and residential health care facilities to implement an environmental assessment and Legionella sampling and management plan for their potable water systems and take necessary responsive actions.

These proposed regulations incorporate important clarifications and revisions from the emergency regulations initially adopted by the Public Health and Health Planning Council on August 17, 2015. In general, the Department organized and streamlined the language for concision and clarity. Certain sections were renumbered and related provisions consolidated. Further, the proposed regulations have been divided into two Subparts.

Costs:

Subpart 4-1

Building owners already incur costs for routine operation and maintenance of cooling towers. There will be some increased costs associated with sampling, inspection, and certification of cooling towers. These costs are detailed in the Regulatory Impact Statement.

State and local governments will incur costs for administration, implementation, and enforcement. Exact costs cannot be predicted at this time. However, some local costs may be offset through the collection of fees, fines and penalties authorized pursuant to this Part. Costs to State and local governments may be offset further by a reduction in the need to respond to community legionellosis outbreaks.

Subpart 4-2

General hospitals and residential healthcare facilities already incur costs associated with running infection control programs. The regulations would incur new costs for those facilities that are not already conducting annual environmental assessments, and would require all such facilities to adopt and implement a Legionella sampling and management plan. In many instances, facilities can complete the environmental assessment using existing hospital staff (maintenance, operations, and nursing staff). The cost of these requirements is expected to be offset by the reduced risk of Legionellosis in such facilities.

Revised Regulatory Flexibility Analysis

Effect of Rule:

The rule will affect the owner of any building with a cooling tower, as those terms are defined in the regulation, which could include small businesses and local governments. Any general hospitals and residential health care facilities owned or operated by a local government or that qualifies as a small business will be required to complete an environmental assessment, adopt and implement a Legionella sampling and management plan for the facilities’ potable water system, and take appropriate responsive actions. At this time, it is not possible to determine the number of small businesses or local governments affected.

Local governments must also enforce Subpart 4-1, relating to regulation of cooling towers. Local governments have the power to enforce the provisions of the State Sanitary Code, including this new Part. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

Compliance Requirements:

Compliance requirement for small businesses and local governments are the same as those requirements set forth in the Regulatory Impact Statement.

Professional Services:

To comply with inspection and certification requirements with respect to cooling towers, small businesses and local governments will need to obtain services of a P.E., C.I.H., certified water technologist, or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not

limited to ASHRAE 188-2015. Small businesses and local governments will need to secure laboratory services for Legionella culture analysis. To comply with disinfection requirements with respect to cooling towers, small businesses and local governments will need to obtain the services of a commercial pesticide applicator or pesticide technician, or pesticide apprentice under supervision of a commercial pesticide applicator.

Compliance with the provisions that apply to general hospitals and healthcare facilities may require expertise in areas such as engineering, physical facility management, water treatment methods, and monitoring of the environmental conditions of their potable water distribution systems.

Compliance Costs:

Compliance costs for small business and local government are consistent with the costs outlined in the Regulatory Impact Statement.

Economic and Technological Feasibility:

Although there will be an impact on building owners, including small businesses and local governments, compliance with the regulation is considered economically and technologically feasible, in part because the requirements are consistent industry best practices. This regulation is also necessary to protect public health, and it is expected to reduce cases of legionellosis in communities around cooling towers, as well as for patients and residents in general hospitals and residential healthcare facilities. Accordingly, the benefits to public health are anticipated to outweigh any costs.

Minimizing Adverse Impact:

The Department provides a cooling tower registry, technical consultation, coordination, and information and updates. In addition, the Department has issued guidance for general hospitals and cooling towers, which is consistent with the proposed regulations. Covered facilities that have followed the guidance will already be in compliance with most of the new regulations.

Small Business and Local Government Participation:

Development of the emergency regulations, upon which these regulations were based, was coordinated with New York City.

Cure Period:

Violation of this regulation can result in civil and criminal penalties. However, the regulations allow for time to adopt plans and perform required actions. Accordingly, and in light of the magnitude of the public health threat posed by Legionella, no cure period is warranted.

Revised Rural Area Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published Job Impact Statement.

Assessment of Public Comment

This assessment summarizes and responds to the comments received on proposed regulations for Subparts 4-1 and 4-2 of Title 10 of the New York State Code of Rules and Regulations, which address protection against Legionella in cooling towers and in the potable water systems of general hospitals and residential health care facilities. The Notice of Proposed Rulemaking was published in the State Register on April 20, 2016. The public comment period for this proposal was open from April 20, 2016 until June 6, 2016.

The Department of Health (“DOH” or the “Department”) received approximately 80, letters and emails, containing over 200 comments and questions from various stakeholders, including but not limited to, manufacturers of cooling towers, cooling tower operators, consultants, power production consortia, analytical laboratories, healthcare facilities and associations, local health departments, and other organizations representing the interests of the affected parties. While the Department processed every comment and each one received equal consideration, in providing responses, the Department grouped together similar comments. The Department made some technical revisions to the regulations in response to these comments, as further explained below. No substantive changes were made to the regulations.

The Assessment of Public Comment presents and responds to all of the comments; this serves as a summary of the most frequent comments and the Department’s corresponding responses. The full text of the regulations, as well as the full Assessment of Public Comment, are available on the Department’s website.

Scope of the Regulation

Several comments recommended the Department broaden the scope of the regulations to include management of entire building water systems, through incorporation of the ANSI/ASHRAE Standard 188-2015. The commenters urged the Department to require the management of the entire building water system for “high-risk” buildings.

The Department acknowledges there are many potential sources of exposure to Legionella bacteria including water in the home, workplace, healthcare facilities or aerosol-producing devices in public places. Part 4

addresses two of those sources—cooling towers and potable water systems in general hospitals and residential health care facilities. Improper maintenance of cooling towers can contribute to the growth and dissemination of Legionella bacteria. Inadequate surveillance for Legionella bacteria in the potable water systems at general hospitals and residential health care facilities can increase the risk for exposure. Findings from a recent Centers for Disease Control and Prevention (CDC) review of legionellosis between 2000 and 2014 (CDC; Morbidity and Mortality Weekly Report, Vol. 65, June 7, 2016) support the Department’s focus on cooling towers and potable water systems in health care facilities. The Department will continue to consider whether and how to regulate other sources of Legionella but does not intend to expand the regulation at this time. Dividing Part 4 into Subparts enables the Department to amend the regulations to address other sources.

Cost of the Regulation

The Department received several comments concerning the cost of the regulation associated with the requirements in both Subparts. The Department will work with local health departments as well as the regulated parties to identify methods to streamline implementation. Subpart 4-2 will be implemented by the Department and will not impact local health departments.

SUBPART 4-1 Cooling Towers

Bacteriological and Legionella culture sampling and analysis

The Department received several comments requesting additional specificity for the sampling methods and conditions describing when additional Legionella culture sampling and analysis must occur. The Department declined to add additional specificity to accommodate new sampling and analytical technologies, professional judgment, and differences between cooling towers and their conditions. No change was made to the regulation.

The Department also received several comments suggesting modification to the bacteriological and Legionella culture sampling and analysis frequency to provide more flexibility. The Department believes the sampling intervals are reasonable and attainable and no change was made to the regulation.

Differences between power production plant cooling towers and those used by other industries

The Department received several comments describing the differences between power production plant cooling towers and those used for other purposes. The Department has had substantial discussions with power production consortia and with the New York State Department of Environmental Conservation (DEC) to discuss the unique issues involving disinfection and discharge permits for power production plant cooling towers.

The Department will continue to address these concerns through guidance. No change was made to the regulation.

Registry

The Department received several comments regarding coordination with New York City Department of Health and Mental Hygiene (DOHMH), given the recently adopted DOHMH regulations pertaining to cooling towers. The Department continues to work with DOHMH to address reporting and data sharing. No change was made to the regulation.

Environmental Laboratory Approval Program (ELAP)

The Department received comments concerning the requirement that Legionella culture analysis be performed by a New York State Environmental Laboratory Approval Program (ELAP) certified laboratory. On June 1, 2016, the Department made application materials available for laboratories to apply for certification for Legionella culture analysis and has begun receiving applications for laboratories. No change was made to the regulation.

Public Notification

The Department received comments concerning the public notification requirement, requesting clarification and a standard approach for notification. The Department will work with local health departments to ensure a standard approach for public notification.

Disinfection

One commenter raised a concern over the technical accuracy of the disinfection language in 10 NYCRR 4-1.7. The Department, in consultation with the DEC, made technical clarifications to the regulation to specify that the terms “disinfect” and “disinfection” mean the control of microorganisms or microbial growth. Further, the regulation permits only biocide products registered by the DEC for use in cooling towers or pesticidal devices in a US EPA registered establishment to be used in disinfection.

Inspection and Certification

The Department received several comments and questions related to the inspections and certification requirements in 10 NYCRR 4-1.8. Several commenters requested changes to the inspection interval. The Department believes the inspection interval is reasonable and attainable, and no change was made to the regulation. Additional clarification was provided in the

full Assessment of Public Comment. The Department will publish additional guidance as needed.

Appendix 4-A

The Department received several comments recommending revisions to Appendix 4-A. In particular, commenters requested a revision to the language prohibiting the use of halogen-based compounds. In response, the Department provided a technical revision to a footnote to address that online disinfection may involve the use of stabilized halogens that are part of normal operations. In addition, the Department revised the second column heading in Appendix 4-A from "Approach" to "Response," as suggested.

SUBPART 4-2 Health Care Facilities Environmental Assessment

The Department received several comments concerning the environmental assessment form, including how to access the form, who should prepare it, and when must it be updated. The forms are currently available to local health departments in the Health Commerce System and will be posted on the Department's website. Assessments should be completed by individuals, or members of an internal multi-disciplinary team, that have the knowledge related to the facility's components, operations, and contract services. As stated in the regulation, the environmental assessment needs to be updated annually or when major construction is conducted at the facility. This means that the environmental assessment must be revised whenever building or plumbing modifications occur that will affect the remainder of the potable water system. No changes were made to the regulation.

Sampling and Management Plan

The Department received comments stating that a comprehensive management program and plan is necessary for healthcare facilities. Specifically, some commenters requested that Subpart 4-2 incorporate ANSI/ASHRAE 188-2015, Annex A, by reference.

The Department did not make substantive amendments to 10 NYCRR 4-2.4 in response to these comments. Elements of Annex A are contained in Department guidance issued as a Health Advisory sent to Article 28 facilities on August 10, 2015 (Health Advisory). In addition, the Department clarified the regulation by changing the term "Sampling Plan" to "Sampling and Management Plan." Inclusion of "Management" in the title better represents the intent of the plan.

The Department also received several questions concerning when samples must be collected, from where, how many, and other details. Many of these answers are available in a Department's Health Advisory, and responsive details are provided in the full Assessment of Public Comment. In addition, the Department will issue updated guidance with additional information. No changes were made to the regulation in response to these comments.

Appendix 4-B

The Department received several comments concerning the sampling result interpretation and response actions for Legionella culture results. The Department revised the second column heading in Appendix 4-B from "Approach" to "Response," as suggested. The Department provided a technical revision to a footnote to remove mention of specific treatment alternatives. Specific answers to the questions received are provided in the full Assessment of Public Comment.

Department of Motor Vehicles

NOTICE OF ADOPTION

Relicensing After Revocation Pursuant to a Fatal Accident Hearing

I.D. No. MTV-18-16-00001-A

Filing No. 610

Filing Date: 2016-06-21

Effective Date: 2016-07-06

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

Action taken: Amendment of sections 136.4 and 136.5 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 501(2)(c), 510(6), 1193(2)(b)(12), (c)(1) and 1194(2)(d)(1)

Subject: Relicensing after revocation pursuant to a fatal accident hearing.

Purpose: Provide that an application for relicensure may be denied pursuant to a revocation arising out of a fatal accident hearing.

Text or summary was published in the May 4, 2016 issue of the Register, I.D. No. MTV-18-16-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, DMV, 6 Empire State Plaza; Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Driver License Endorsements

I.D. No. MTV-18-16-00002-A

Filing No. 611

Filing Date: 2016-06-21

Effective Date: 2016-07-06

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

Action taken: Amendment of section 3.2 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 501-a(8)

Subject: Driver license endorsements.

Purpose: To conform regulation with federal and state laws for the covered farm vehicles and the P license endorsement.

Text or summary was published in the May 4, 2016 issue of the Register, I.D. No. MTV-18-16-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, DMV, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

Comment: The New York State Farm Bureau commented that they understand the DMV's justification for promulgating the regulation, due to the need to comply with federal regulations. The Farm Bureau expressed appreciation for DMV's efforts to reach out to and educate persons affected by the law and asked the DMV give special consideration to persons who must now obtain a CDL with a hazardous materials endorsement. Response: The Department will continue to work with the Farm Bureau and the farm community to assist with implementation of this new law.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Certified Examiners

I.D. No. MTV-27-16-00001-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 repeal section 6.13 and add a new section 6.13 to Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 509-g and 509-m(2)

Subject: Certified examiners.

Purpose: To clarify and strengthen guidelines regarding certified examiners.

Text of proposed rule: Section 6.13 is repealed and a new section 6.13 is added to read as follows:

*Examiners Certified by the Department of Motor Vehicles
6.13 Certified examiners and related carrier responsibilities.*

(a) Any individual conducting any of the examinations required by Section 6.8(c), defensive driving performance; 6.11, biennial behind-the-wheel driving test; and 6.12, the biennial oral or written examination, of this Part must be certified by the Department of Motor Vehicles or be a motor vehicle license examiner. In order to be certified, an individual must have an acceptable driving record (no more than six points accumulated on his or her abstract of operating record within the preceding

18-month period). Such individual must have a valid driver's license with the appropriate endorsements and must be properly licensed in the class in which he or she will be testing drivers as required under this Part. (Note: Such individual is not required to hold an "S" endorsement). In addition, the individual must complete and submit an application for certified examiner, along with supporting documentation, if applicable, to the DMV and must meet the following qualifications:

(1) A person must have a minimum of two years of experience in driver training and evaluation of the driving ability of others; and either:

(i) have successfully completed a college level course with a minimum of four credit hours in driver education instruction and have, within the preceding three years, a minimum of 18 months experience in the operation of the type of vehicle in which he or she will be testing while in the employ of an article 19-A motor carrier; or

(ii) have successfully completed a course in driver training and traffic safety approved by the commissioner for the purpose of becoming a 19-A certified examiner, and have, within the preceding three years, a minimum of 18 months experience in the operation of the type of vehicle in which he or she will be testing while in the employ of an article 19-A carrier.

(2) If a person is unable to meet the requirements of subparagraphs (1)(i) and (ii) of this subdivision, he or she may complete an application for qualification and deliver it with special affidavits (which note in detail his or her experience in training and any other special circumstances which might qualify the person to become a certified examiner) to the Department of Motor Vehicles. The applicant should present such affidavits and application to DMV for final review and a decision on whether certification is granted.

(3) A person must pass an appropriate written, vision, and road test. An applicant must also participate in a qualifying interview conducted by the New York State Department of Motor Vehicles.

(b) In conjunction with the above certification requirements, additional information and verification may also be required.

(c) A certified examiner is required to attend at least once, every three years, an Article 19-A seminar approved by DMV. A completion certificate, demonstrating completion of such seminar, must be submitted to the DMV in order to maintain valid status as a certified examiner.

(d) Period of validity of examiner's certificate. An examiner's certificate shall be valid from its date of issuance until the expiration of such person's driver's license. (NOTE: The certified examiner is responsible for renewing his or her certificate with DMV by filing the 19-A Certified Examiner renewal application form.)

(e) An examiner's certificate may be terminated:

(1) on a finding made by the commissioner of incompetence, malfeasance, misfeasance, misrepresentation or nonfeasance of the examiner;

(2) if a certified examiner has accumulated seven or more points in an 18-month period on his or her license or if his or her license has been suspended or revoked;

(3) if such examiner is found to have violated any provisions of this Part, Article 19-A or any other section of the Vehicle and Traffic Law;

(4) if a certified examiner has not renewed the certification;

(5) if a certified examiner has not provided the Article 19-A course completion certificate required every three years; or

(6) if the certified examiner does not hold a valid commercial driver license with required endorsements.

(f) If an examiner's certification is terminated, the commissioner may require a motor carrier's employees to be retested, if they had most recently been tested by such terminated examiner.

(g) Upon the termination of a certified examiner's certification, such examiner shall:

(1) report the termination and the reason for such termination (e.g., license suspension, revocation, etc.) to their employer or employers immediately.

(2) surrender his/her certified examiner certificate within 10 days to DMV.

(h) To return to certified examiner status after termination, a former examiner must:

(1) resolve the termination within one year if caused by non-renewed certification; non-provided Article 19-A course completion certificate; an invalid commercial license, endorsement, suspension or revocation, or otherwise;

(2) file a new application to be a certified examiner as required under Section 6.13 of this Part after one year. DMV will review such application and make a determination as to whether to grant re-certification. In addition, retesting may be required.

(i) Requirements for Motor Carriers. Carriers subject to 19-A of the Vehicle and Traffic Law shall utilize the services of certified examiners to carry out, at a minimum, the annual defensive driving performance - regular observation, biennial behind-the-wheel driving test, and the biennial oral or written examinations that are required for bus drivers under Article 19-A. The carrier responsibilities include:

(1) At a minimum, having the services of at least one certified examiner for every 100 drivers. These certified examiners can either be employees of the carrier or contracted by the carrier.

(2) Reporting the name, driver license number and certified examiner number to the DMV unit responsible for the 19-A regulations within 10 days of the date a certified examiner begins employment, no matter the length of employment.

(3) Reporting the name, driver license number and certified examiner number to the DMV unit responsible for the 19-A regulations within 10 days a certified examiner terminates employment, no matter the length of employment.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, DMV, 6 Empire State Plaza, Room 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Ida Traschen, DMV, 6 Empire State Plaza, Room 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

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

Consensus Rule Making Determination

Section 509-g(4) of the Vehicle and Traffic Law and Part 6.13 of the Commissioner's Regulations authorize the use of "competent supervisory personnel", also known as certified examiners, to supervise the defensive driving performance, biennial behind the wheel driving test and the biennial oral and written tests of Article 19-A bus and school bus drivers.

The purpose of this rulemaking is to clarify and strengthen the requirements related to certified examiners. The proposed rule clarifies the process to become a certified examiner, to maintain such certification and the basis for termination of one's status as a certified examiner. For example, the rule provides that an examiner's certificate may be terminated if the person has not provided the Article 19-A course completion certificate required every three years or if the certified examiner does not hold a valid commercial driver license with required endorsements. In addition, the regulation sets forth minimum requirements for motor carriers who employ certified examiners, e.g., the carrier must have the services of at least one examiner per 100 drivers.

The Department submitted the proposed rule for review to over 100 carriers and associations across New York State, including small, medium and large carriers. No adverse comments were received; only minor technical revisions were recommended, which were incorporated into the final proposed rule. Since the Department anticipates no opposition to the proposed rule, a consensus rulemaking is appropriate.

Job Impact Statement

A Job Impact Statement is not submitted with this proposed rule because it has no adverse impact on job development or job opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Driving Schools

I.D. No. MTV-27-16-00008-P

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

Proposed Action: This is a consensus rule making to amend Part 76 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215 and 394

Subject: Driving schools.

Purpose: Makes technical and clarifying amendments to improve consumer protection and increases department efficiency.

Substance of proposed rule (Full text is posted at the following State website: www.nys.dmv.gov): The purpose of this proposed rulemaking is to conform Part 76 to current procedures or planned updates intended to increase efficiency, and to correct errors and delete references to obsolete Departmental procedures in relation to driving schools and driving school instructors.

The key changes include:

Clarifications and revisions to driving school and driving school instructor forms;

Changes to the period of validity for driving school licenses and certificates;

Extends the time within which driving school license may be renewed;

Deletes references to the three hour pre-licensing course, which is now 5 hours;

Changes the square footage of a driving school classroom space from 200 to 150 square feet for the first ten or fewer students and from 20 to 15

square feet for each additional student to correspond with the point and insurance reduction requirements;

Eliminates references to a vehicle certificate, which was discontinued by the Department prior to 1990;

Eliminates the requirement that a driving instructor must first be certified as an instructor for "car" instruction;

Clarifies the requirements for instructor-applicants seeking to instruct in a vehicles requiring a higher class license than they hold;

Eliminates the subdivision which allows driving school's desiring to employ a previously certified instructor to obtain any and all notices on form MV-526 previously filed by other schools with respect to the instructor's termination;

Deletes references to a "student record card", and to a "bound book" related to record receipts and disbursements, and permits driving schools to keep these records electronically;

Deletes an obsolete process in subdivision (g) of section 76.8 which states that "[a] duplicating process such as ditto or mimeograph will not be considered to constitute preprinting for the purposes of this section"; and

Adds "or other payment method as specified by the commissioner" which would allow for fees related to driving schools to be paid in forms other than check or money order.

The full text of the proposed rule is available on the DMV's website at www.dmv.ny.gov.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, DMV, 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: David Cadalso, DMV, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

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

Consensus Rule Making Determination

The purpose of this proposed rulemaking is to conform Part 76 to current procedures or planned updates intended to increase efficiency, and to correct errors and delete references to obsolete Departmental procedures in relation to driving schools and driving school instructors.

These amendments include changes to driving school and driving school instructor application forms, the types of application or renewal documents necessary for driving school and/or driving school instructor applications or renewals, changes to the application submission process and changes to the period of validity of driving school licenses and driving instructors' certificates.

The changes to the validity of the driving school licenses and instructor certificates would spread out the workload for Department employees over the course of the year rather than requiring that all renewals due to expire that year be processed by the end of June (for driving schools) and by the end of September (for instructors). These changes would also avoid the additional work that goes along with the proration of fees paid for licenses that expire in less than full-year increments, as is required under Vehicle and Traffic Law Section 394. With these changes, all driving school licenses and driving instructor certificates would be valid for a full year from when originally issued or two full years from when renewed, with the exception instructors with out-of-state issued driver licenses. Those certificates will expire on the last day of the twelfth month following the date of the New York certificate issuance.

This proposal also extends the time within which driving school licenses may be renewed. Currently, driving school licenses have to be renewed prior to expiration; otherwise, the driving school has to reapply for the license which includes, among other things, physical inspection of the place of business by a Department employee. This change would allow driving schools to renew the license up to six months following expiration, saving Department employees the additional work that goes along with processing the application of an otherwise qualified driving school.

Other changes in this proposal include deleting reference to the "three-hour prelicensing course" and replacing it with the term "Pre-licensing course" because individuals seeking a drivers' license are now required to take a five hour long course; changing the square footage of a driving school classroom space from 200 to 150 square feet for the first ten or fewer students and from 20 to 15 square feet for each additional student to correspond with the point and insurance reduction requirements; eliminating references to a vehicle certificate, which was discontinued by the Department prior to 1990; eliminating the requirement that a driving instructor must first be certified as an instructor for "car" instruction; and clarifying the requirements for instructor-applicants seeking to instruct in a vehicles requiring a higher class license than they hold. This proposal also eliminates the subdivision which allows driving school's desiring to employ a previously certified instructor to obtain any and all notices on form MV-526 previously filed by other schools with respect to the instructor's termination. Such requests are very rare and such notices

contain instructor personal information. This proposal also deletes references to a "student record card", and to a "bound book" related to record receipts and disbursements, and permits driving schools to keep these records electronically. It also deletes an obsolete process in subdivision (g) of section 76.8 which states that "[a] duplicating process such as ditto or mimeograph will not be considered to constitute preprinting for the purposes of this section", and re-letters the subsequent subdivisions to account for such deletion.

Changes made to correct errors include replacing the term "licensed" with "certified" when referring to instructors in paragraph (3) of subdivision (c) of section 76.1 because instructors are certified and not licensed by the Department, and adding "with dual controls on foot brakes" in paragraph (2) of subdivision (d) of section 76.11 because this language was mistakenly deleted in a previous amendment. Changes to reflect current procedures include adding "or other payment method as specified by the commissioner" which would allow for fees related to driving schools to be paid in forms other than check or money order.

The proposed rule focuses on efficiencies, clarifications and removing obsolete provisions. Therefore, it is submitted as a consensus rule because there are no persons or businesses likely to object.

Job Impact Statement

A Job Impact Statement is not submitted because this rule will have no adverse impact on job creation or job development in New York State.

Public Service Commission

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-23-15-00007-A

Filing Date: 2016-06-20

Effective Date: 2016-06-20

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

Action taken: On 6/15/16, the PSC adopted an order approving 200 W. 54 Corp.'s (200 West) petition to submeter electricity at 200 West 54th Street, New York, New York.

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

Subject: Submetering of electricity.

Purpose: To approve 200 West's petition to submeter electricity at 200 West 54th Street, New York, New York.

Substance of final rule: The Commission, on June 15, 2016, adopted an order approving 200 W. 54 Corp.'s petition to submeter electricity at 200 West 54th Street, New York, New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0214SA1)

NOTICE OF ADOPTION

NYSEG's Electric Rate Plan

I.D. No. PSC-37-15-00006-A

Filing Date: 2016-06-15

Effective Date: 2016-06-15

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

Action taken: On 6/15/16, the PSC adopted a joint proposal approving New York State Electric and Gas Corporation's (NYSEG) electric rate plan.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: NYSEG's electric rate plan.

Purpose: To approve NYSEG's electric rate plan.

Substance of final rule: The Commission, on June 15, 2016, adopted a joint proposal executed by New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, trial staff of the Department of Public Service, the New York State Department of State, Division of Consumer Protection, Utility Intervention Unit, Nucor Steel Auburn, Inc., Pace Energy and Climate Center, and Wal-Mart Stores East, LP and Sam's East, Inc., approving New York State Electric and Gas Corporation's three-year electric rate plan, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0283SA1)

NOTICE OF ADOPTION

NYSEG's Gas Rate Plan

I.D. No. PSC-37-15-00008-A

Filing Date: 2016-06-15

Effective Date: 2016-06-15

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

Action taken: On 6/15/16, the PSC adopted a joint proposal approving New York State Electric and Gas Corporation's (NYSEG) gas rate plan.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: NYSEG's gas rate plan.

Purpose: To approve NYSEG's gas rate plan.

Substance of final rule: The Commission, on June 15, 2016, adopted a joint proposal executed by New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, trial staff of the Department of Public Service, the New York State Department of State, Division of Consumer Protection, Utility Intervention Unit, Nucor Steel Auburn, Inc., Pace Energy and Climate Center, and Wal-Mart Stores East, LP and Sam's East, Inc., approving New York State Electric and Gas Corporation's three-year gas rate plan, 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-G-0284SA1)

NOTICE OF ADOPTION

RG&E's Electric Rate Plan

I.D. No. PSC-37-15-00009-A

Filing Date: 2016-06-15

Effective Date: 2016-06-15

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

Action taken: On 6/15/16, the PSC adopted a joint proposal approving Rochester Gas and Electric Corporation's (RG&E) electric rate plan.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: RG&E's electric rate plan.

Purpose: To approve RG&E's electric rate plan.

Text or summary was published in the September 16, 2015 issue of the Register, I.D. No. PSC-37-15-00009-P.

Substance of final rule: The Commission, on June 15, 2016, adopted a joint proposal executed by New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, trial staff of the Department of Public Service, the New York State Department of State, Division of Consumer Protection, Utility Intervention Unit, Nucor Steel Auburn, Inc., Pace Energy and Climate Center, and Wal-Mart Stores East, LP and Sam's East, Inc., approving Rochester Gas and Electric Corporation's three-year electric rate plan, subject to the terms and conditions set forth in the order.

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

Assessment of Public Comment

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

(15-E-0285SA1)

NOTICE OF ADOPTION

RG&E's Gas Rate Plan

I.D. No. PSC-37-15-00010-A

Filing Date: 2016-06-15

Effective Date: 2016-06-15

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

Action taken: On 6/15/16, the PSC adopted a joint proposal approving Rochester Gas and Electric Corporation's (RG&E) gas rate plan.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: RG&E's gas rate plan.

Purpose: To approve RG&E's gas rate plan.

Text or summary was published in the September 16, 2015 issue of the Register, I.D. No. PSC-37-15-00010-P.

Substance of final rule: The Commission, on June 15, 2016, adopted a joint proposal executed by New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, trial staff of the Department of Public Service, the New York State Department of State, Division of Consumer Protection, Utility Intervention Unit, Nucor Steel Auburn, Inc., Pace Energy and Climate Center, and Wal-Mart Stores East, LP and Sam's East, Inc., approving Rochester Gas and Electric Corporation's three-year gas rate plan, subject to the terms and conditions set forth in the order.

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-G-0286SA1)

NOTICE OF ADOPTION

Transfer of Cable Entities

I.D. No. PSC-47-15-00015-A

Filing Date: 2016-06-15

Effective Date: 2016-06-15

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

Action taken: On 6/15/16, the PSC adopted an order approving Altice N.V. (Altice) and Cablevision Systems Corporation's (Cablevision) joint petition of a holding company level transaction transferring control of Cablevision's entities operating in New York to Altice.

Statutory authority: Public Service Law, sections 99(2), 100(1), 101 and 222

Subject: Transfer of cable entities.

Purpose: To approve Altice and Cablevision's joint petition to transfer Cablevision's cable entities in New York to Altice.

Text or summary was published in the November 25, 2015 issue of the Register, I.D. No. PSC-47-15-00015-P.

Substance of final rule: The Commission, on June 15, 2016, adopted an order approving Altice N.V. (Altice) and Cablevision Systems Corporation's joint petition of a holding company level transaction transferring control of Cablevision Lightpath, Inc. and Cablevision System Corporation's cable entities operating in New York to Altice, subject to the terms and conditions set forth in the order.

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-0647SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-52-15-00014-A

Filing Date: 2016-06-20

Effective Date: 2016-06-20

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

Action taken: On 6/15/16, the PSC adopted an order approving EO 180 Water LLC's (EO 180) petition to submeter electricity at 180 Water Street, New York, New York.

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

Subject: Submetering of electricity.

Purpose: To approve EO 180's petition to submeter electricity at 180 Water Street, New York, New York.

Substance of final rule: The Commission, on June 15, 2016, adopted an order approving EO 180 Water LLC's petition to submeter electricity at 180 Water Street, New York, New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0690SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-03-16-00007-A

Filing Date: 2016-06-15

Effective Date: 2016-06-15

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

Action taken: On 6/15/16, the PSC adopted an order approving Longhouse Cooperative's (Longhouse) petition to submeter electricity at 772 Elm Street Extension, Ithaca, New York.

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

Subject: Submetering of electricity.

Purpose: To approve Longhouse's petition to submeter electricity at 772 Elm Street Extension, Ithaca, New York.

Substance of final rule: The Commission, on June 15, 2016, adopted an order approving Longhouse Cooperative's petition to submeter electricity at 772 Elm Street Extension, Ithaca, New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0736SA1)

NOTICE OF ADOPTION

Increase in Annual Revenues and Escrow Account

I.D. No. PSC-06-16-00009-A

Filing Date: 2016-06-17

Effective Date: 2016-06-17

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

Action taken: On 6/15/16, the PSC adopted an order approving Rainbow Water Company, Inc. (Rainbow Water) to increase its annual revenues by \$12,555 or 17.5% and escrow account from \$8,640 to \$14,400, combining with Sunrise Ridge Water Company (Sunrise).

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10)(a), (b), (3) and (f)

Subject: Increase in annual revenues and escrow account.

Purpose: To approve Rainbow Water to increase its annual revenues and escrow account, combining with Sunrise.

Substance of final rule: The Commission, on June 15, 2016, adopted an order approving Rainbow Water Company, Inc. (Rainbow Water) to increase its annual revenues by \$12,555 or 17.5% in order to recover increases in its operating costs and increase its escrow account from \$8,640 to \$14,400, to combine both Rainbow Water and Sunrise Ridge Water Company under one tariff (P.S.C. No. 3 – Water) and one escrow account, 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.

(16-W-0019SA1)

NOTICE OF ADOPTION

Transfer of Ownership of the 1985 Bell 206L-3 Helicopter

I.D. No. PSC-13-16-00010-A

Filing Date: 2016-06-16

Effective Date: 2016-06-16

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

Action taken: On 6/15/16, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's petition (National Grid) to transfer ownership of the 1985 Bell 206L-3 model helicopter to Fly Hangar 13, LLC (Fly Hangar).

Statutory authority: Public Service Law, sections 65, 66 and 70

Subject: Transfer of ownership of the 1985 Bell 206L-3 helicopter.

Purpose: To approve the transfer of ownership of the 1985 Bell 206L-3 helicopter from National Grid to Fly Hangar.

Substance of final rule: The Commission, on June 15, 2016, adopted an order approving Niagara Mohawk Power Corporation d/b/a National

Grid's petition to transfer ownership of the 1985 Bell 206L-3 model helicopter to Fly Hangar 13, LLC, 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.

(16-M-0083SA1)

NOTICE OF ADOPTION

Transfer of Control of Certain Cable Television Assets from SCCC to Zito

I.D. No. PSC-15-16-00011-A

Filing Date: 2016-06-16

Effective Date: 2016-06-16

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

Action taken: On 6/15/16, the PSC adopted an order approving Zito New York, LLC [DE] (Zito) and Southern Cayuga County Cablevision, LLC's [NY] (SCCC) joint petition for the transfer of control of certain cable television assets from SCCC to Zito.

Statutory authority: Public Service Law, section 222

Subject: Transfer of control of certain cable television assets from SCCC to Zito.

Purpose: To approve Zito and SCCC's joint petition for a transfer of control of certain cable television assets from SCCC to Zito.

Substance of final rule: The Commission, on June 15, 2016, adopted an order approving Zito New York, LLC [DE] (Zito) and Southern Cayuga County Cablevision, LLC's [NY] (SCCC) joint petition for the transfer of the systems, assets, facilities and Certificates of Confirmation from SCCC to Zito for the provision of cable service in the Towns of Locke, Genoa and Moravia, and the Village of Moravia, all in Cayuga County, 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.

(16-V-0185SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Continuation of the State Universal Service Fund

I.D. No. PSC-27-16-00006-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 Joint Proposal filed by several parties that would continue the current State Universal Service Fund (SUSF) past its expiration date of 12/31/16 for four years.

Statutory authority: Public Service Law, sections 4, 5, 90, 91, 92, 94 and 97

Subject: Continuation of the State Universal Service Fund.

Purpose: To consider a proposal to continue the SUSF for an additional four years, through 12/31/20.

Substance of proposed rule: The Public Service Commission is considering a Joint Proposal that would provide for a four-year continuation of the current State Universal Service Fund (SUSF), past its December 31, 2016

expiration date, with a \$6.5 million per year maximum funding commitment, for a total of \$26 million. The terms of the Joint Proposal would continue the administrative and eligibility framework established by the Commission in its August 17, 2012 decision in Case 09-M-0527. For example, eligible recipients for SUSF disbursements will remain unchanged from the 31 smaller incumbent local exchange carriers (ILECs) previously determined by the Commission to be eligible to receive SUSF disbursements. Also, Voice Over Internet Protocol (VOIP) and wireless carriers would not be required to contribute to the fund. The Joint Proposal signatories are Department of Public Service Staff, Verizon New York Inc., Frontier Communications, New York State Telecommunications Association, Smaller ILEC Group, Cable Telecommunications Association of New York, Inc., and the Department of State Utility Intervention Unit. The Commission may adopt, reject or modify, in whole or in part, the Joint Proposal and may consider 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-0742SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of a Commission Policy on Test Years in Rate Cases

I.D. No. PSC-27-16-00007-P

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

Proposed Action: The Commission is considering the petition of Corning Natural Gas Corporation for a waiver of the Commission's policy requiring a rate case be filed no more than 150 day after the end of the test year.

Statutory authority: Public Service Law, sections 66, 89-c and 92

Subject: Waiver of a Commission policy on test years in rate cases.

Purpose: To consider the waiver of the Commission's 150 day requirement.

Substance of proposed rule: The Public Service Commission is considering the petition of Corning Natural Gas Corporation (the Company) for a waiver of the Commission's policy in its Statement of Policy on Test Periods in Major Rate Proceedings, issued November 23, 1977, requiring that all major rate cases be filed no more than 150 days after the end of the utility's test year. In a petition filed on May 25, 2016, the Company requested a waiver of the policy requirement for its impending rate filing, which the Company anticipates will be made within 180 days from the end of its test year. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-G-0325SP1)