RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

NOTICE OF EXPIRATION

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

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-19-15-00005-P	May 13, 2015	May 12, 2016

Department of Economic Development

EMERGENCY RULE MAKING

START-UP NY Program

I.D. No. EDV-22-16-00002-E
Filing No. 484
Filing Date: 2016-05-13
Effective Date: 2016-05-13

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

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

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

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

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

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

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

Subject: START-UP NY Program.

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

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

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

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

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

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

5) The regulation establishes eligibility requirements for businesses to participate in the START-UP program, and enumerates excluded industries. To be eligible, a business must: be a new business to the State

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

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

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

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

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

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

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

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

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

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

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

16) In order to assess business performance under the START-UP program, the Commissioner may require participating businesses to submit annual reports within thirty days at the end of their taxable year describing the businesses' continued satisfaction of eligibility requirements, jobs data, an accounting of wages paid to employees in net new jobs, and any other information the Commissioner may require. The Commissioner shall prepare annual reports on the START-UP program for the Governor and publication on the DED website, beginning April 1, 2015. Information contained in businesses' annual reports may be published in these reports or otherwise disseminated.

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

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 10, 2016.

Text of rule and any required statements and analyses may be obtained from: Phillip Harmonick, New York State Department of Economic Development, 625 Broadway, Albany, New York 12207, (518) 292-5112, email: pharmonick@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

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

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

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

COSTS:

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

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

III. Costs to the State government: None.

IV. Costs to local governments: None.

LOCAL GOVERNMENT MANDATES:

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

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

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

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

Rural Area Flexibility Analysis

The START-UP NY program is open to participation from any business that meets the eligibility requirements, and is organized as a corporation, partnership, limited liability company, or sole proprietorship. A business's decision to locate its facilities in a Tax-Free NY Area associated with a rural university or college would be no impediment to participation; in fact, START-UP NY allocates space for Tax-Free NY Areas specifically to the upstate region which contains many of New York's rural areas. Furthermore, START-UP NY specifically calls for the balanced allocation of space for Tax-Free NY Areas between eligible rural, urban, and suburban areas in the state. Thus, the regulation will not have a substantial adverse economic impact on rural areas, and instead has the potential to generate significant economic activity in upstate rural areas designated as Tax-Free NY Areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The regulation establishes procedures and standards for the administration of the START-UP NY program. START-UP NY creates tax-free areas designed to attract innovative start-ups and high-tech industries to New York so as to stimulate economic activity and create jobs. The regulation will not have a substantial adverse impact on jobs and employment opportunities; rather, the program is focused on creating jobs. Because it is evident from the nature of the rulemaking that it will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Education Department

EMERGENCY RULE MAKING

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

I.D. No. EDU-52-15-00017-E
Filing No. 483
Filing Date: 2016-05-13
Effective Date: 2016-05-13

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

Action taken: Addition of sections 30-2.14 and 30-3.17 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1), (2), 3009(1), 3012-c and 3012-d; L. 2015, ch. 20, subpart C, section 3; L. 2015, ch. 56, part EE, subpart E, sections 1 and 2

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement the recommendations of the Common Core Task Force which were released on December 10, 2015. The Task Force recommended that until the new Learning Standards and State assessments are fully phased in, the results from the State assessments (Grades 3-8 English language arts and mathematics) and the use of any State-provided growth model based on these tests or other State assessments shall not have evaluative consequence for teachers or students.

A Notice of Proposed Rule Making was published in the State Register on December 30, 2015. Based on feedback received from the field, the proposed amendment was revised and a Notice of Emergency Adoption and Revised Rule Making was published in the State Register on March 30, 2016. Since the Board of Regents meets at fixed intervals, the earliest the revised rule can be presented for regular (non-emergency) adoption, after expiration of the required 30-day public comment period provided for a revised rulemaking pursuant to the State Administrative Procedure Act (SAPA) would be the May Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the May meeting, would be June 1, 2016, the date a Notice of Adoption would be published in the State Register.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed amendment is adopted by emergency action to ensure that teachers and principals receive transition scores and ratings for the 2015-2016 school year in accordance with the proposed amendment and that the results of the State assessments (grades 3-8 English language arts and mathematics) and State-provided growth scores based on Regents examinations are not used for evaluative purposes in the 2015-2016 school year through the 2018-2019 school year and so school districts are able to complete their negotiations for annual professional performance reviews conducted under Education Law § 3012-d, which for State aid purposes must be completed by September 1, 2016. Emergency action is also necessary to ensure that the proposed rule adopted at the December 2015 meeting, which has been subsequently revised at the February 2016 Regents meeting, remains continuously in effect until it can be adopted as a permanent rule.

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

Purpose: To implement the recommendations of the New York Common Core Task Force Report by establishing transition ratings for teachers and building principals during a four-year transition period for APPRs, while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model.

Text of emergency rule: 1. A new section 30-2.14 of the Rules of the Board of Regents is added, effective May 13, 2016, to read as follows:

§ 30-2.14. Annual Professional Performance Review Scores and Ratings for the 2015-16 School Year During a Transition to Higher Learning Standards.

(a) For purposes of this section, State assessments shall mean the grades 3-8 English language arts and mathematics State assessments.

(b) Notwithstanding any other provision of this Part to the contrary, the Commissioner shall establish procedures in guidance for transition scores and ratings for teachers and principals whose annual professional performance reviews conducted pursuant to Education Law § 3012-c and this Subpart for the 2015-2016 school year are based, in whole or in part, on State assessments and/or on State-provided growth scores on Regents examinations during a transition period while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model.

(1) State-provided growth scores will continue to be calculated pursuant to this Subpart for advisory purposes only during this transition period and teachers and principals will continue to receive an overall score and rating calculated pursuant to this Subpart.

(2) For the transition period, an overall composite transition score and rating shall be generated based on the scores and ratings on the remaining subcomponents of the annual professional performance review that are not based on State assessments and/or a State-provided growth score on Regents examinations. The overall composite transition score shall include the use of any back-up SLOs developed by the district/BOCES in lieu of the State-provided growth score on State assessments; provided that such back-up SLOs shall not be based on State assessments.

(c) Except as otherwise provided in subdivision (d) of this section, a teacher's or principal's final composite score and rating, for all purposes under section 3012-c of the Education Law or this Subpart as well as for purposes of tenure determinations and other employment decisions and proceedings pursuant to Education Law §§ 3020-a and 3020-b, shall be the transition composite score and rating. The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's transition composite score and rating.

(d) For purposes of public reporting of aggregate data and disclosure to parents pursuant to paragraph b of subdivision 10 of section 3012-c of the Education Law, the original composite score and rating pursuant to section 3012-c of the Education Law and this Subpart shall be reported with (i) the transition composite score and rating and (ii) an explanation of such transition composite score and rating.

2. A new section 30-3.17 of the Rules of the Board of Regents is added, effective May 13, 2016, to read as follows:

§ 30-3.17. Annual Professional Performance Review Ratings for the 2015-2016 through the 2018-2019 school years for Annual Professional Performance Reviews Conducted Pursuant to Education Law § 3012-d and this Subpart, During a Transition to Higher Learning Standards.

(a) For purposes of this section, State assessments shall mean the grades 3-8 English language arts and mathematics State assessments.

(b) Notwithstanding any other provision of this Subpart to the contrary, the Commissioner shall establish procedures in guidance for determining transition scores and ratings for teachers and principals whose annual professional performance reviews conducted pursuant to Education Law § 3012-d and this Subpart for the 2015-2016 through the 2018-2019 school years are based, in whole or in part, on State assessments and/or State-provided growth scores on Regents examinations, while the State completes the transition to higher learning standards through new State assessments aligned to higher learning standards, and a revised State-provided growth model.

(1) State-provided growth scores will continue to be calculated for advisory purposes only pursuant to this Part during this transition period and teachers and principals will continue to receive an overall rating calculated pursuant to this Subpart.

(2) In addition, during this transition period, the Commissioner may also authorize the use of one or more State-provided growth model(s) that take into consideration multiple years of student growth on State assessments to compute scores in the required subcomponent of the student performance category, for advisory purposes only under this section.

(3) During the transition period, a transition score and rating on the student performance category, and a transition rating that incorporates the student performance category rating shall be generated based on:

(i) the scores/ratings in the subcomponents of the student performance category that are not based on State assessments and/or a State-provided growth score on Regents assessments; and

(ii) for the 2016-2017 through 2018-2019 school years, in instances where no scores/ratings in the subcomponents of the student performance category can be generated, notwithstanding any other provision of this Subpart to the contrary, a SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.

(c) Except as otherwise provided in subdivision (d) of this section, a teacher's or principal's final composite rating for all purposes under section 3012-d of the Education Law or under this Subpart, as well as for purposes of tenure determinations, individual employment records, and other employment decisions and proceedings pursuant to Education Law § 3020-b, shall be the overall transition rating. The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's overall transition composite rating.

(d) For purposes of public reporting of aggregate data and disclosure to parents pursuant to paragraph b of subdivision 10 of section 3012-c of the Education Law as made applicable to this Subpart, the original composite rating pursuant to section 3012-d of the Education Law and this Subpart shall be reported with (i) the overall transition rating and (ii) an explanation of such overall transition rating.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-52-15-00017-EP, Issue of December 30, 2015. The emergency rule will expire July 11, 2016.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: regcomments@nysed.gov

Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on December 30, 2015, the following substantial revisions were made to the proposed rule:

Section 30-3.17(b)(3) was amended to clarify that in instances where no scores/ratings in the subcomponents of the student performance category can be generated, notwithstanding any other provision of this Subpart to the contrary, a SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments for the 2016-2017 school year through the 2018-2019 school year (and not the 2015-2016 school year).

Section 30-3.17(c) was amended to specifically state that only the transition scores and ratings will be reported on individual employment records during the four-year transition period.

The above revisions to the proposed rule require revisions to the Needs and Benefits section of the previously published Regulatory Impact Statement as follows:

3. NEEDS AND BENEFITS:

In September 2015, Governor Andrew Cuomo formed the Common Core Task Force to undertake a comprehensive review of the current status and use of the Common Core State Standards and assessments in New York and to recommend potential reforms to the system. Following multiple meetings, the Task Force reviewed and discussed information presented at public sessions and submitted through the website, and has made a number of recommendations regarding the implementation of the Common Core Standards.

On December 10, 2015, the Task Force released their report, affirming that New York must have rigorous, high quality education standards to improve the education of all of our students and hold our schools and districts accountable for students' success but recommended that the Common Core standards be thoroughly reviewed and revised consistent as reflected in the report and that the State assessments be amended to reflect such revisions. In addition, the Task Force recommended that until the new system is fully phased in, the results from the grades 3-8 English language arts and mathematics State assessments and the use of any State-provided growth model based on these tests or other State assessments shall not have consequence for teachers or students. Specifically, Recommendation 21 from the Task Force's Final Report ("Report") provides as follows:

"…State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers. The transition phase shall last until the start of the 2019-2020 school year".

Proposed amendment

In an effort to implement the Task Force's recommendation, the proposed amendment makes the following changes:

- Two new sections 30-2.14 and 30-3.17 are added to provide for a four year transition period for annual professional performance reviews (APPRs) while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model. During the transition period, the Commissioner will determine transition scores and ratings that will replace the original scores and HEDI ratings computed under the existing provisions of Subpart 30-2 and 30-3 of the Regents Rules for evaluation of teachers and principals whose APPRs are based, in whole or in part, on State assessments in grades 3-8 ELA and mathematics assessments and State-provided growth scores on Regents examinations. The transition period will end with the 2018-2019 school year.
- Section 30-2.14 relates to evaluations under Education Law § 3012-c and Subpart 30-2 of the Regents Rules and applies to evaluations for the 2015-2016 school year only, as school districts conduct the negotiations necessary to come into compliance with new Education Law § 3012-d. Section 30-3.17 relates to evaluations under Education Law § 3012-d, and applies to evaluations for the 2015-2016 through the 2018-2019 school year.
- During the transition period, transition scores and HEDI ratings will replace the scores and HEDI ratings for teachers and principals whose HEDI scores are based, in whole or in part, on State assessments in grades 3-8 ELA or mathematics (including where State-provided growth scores are used) or on State-provided growth scores on Regents examinations.
- In the case of evaluations conducted pursuant to Education Law § 3012-c and new § 30-2.14, the overall transition scores and ratings will be determined based upon the remaining subcomponents of the annual professional performance review that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations.
- In the case of evaluations pursuant to Education Law § 3012-d and new § 30-3.17, transition scores and ratings for the student performance category and the overall transition rating will be determined using the scores/ratings in the subcomponents of the student performance category that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations or, in instances where no scores/ratings in the subcomponents of the student performance category can be generated, for the 2016-2017 school year through the 2018-2019 school year, a back-up SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.
- State provided growth scores will continue to be computed for advisory purposes only and overall HEDI ratings will continue to be provided to teachers and principals based on such growth scores. However, during the transition period, only the transition score and rating will be used for purposes of Education Law §§ 3012-c and 3012-d and Subparts 30-2 and 30-3, and for purposes of employment decisions, including tenure determinations, individual employment records and for purposes of proceedings under Education Law §§ 3020-a and 3020-b and teacher and principal improvement plans.
- However, for purposes of public reporting of aggregate data and disclosure to parents pursuant to subdivision 10 of section 3012-c of the Education Law, the original composite score and rating and the transition composite score and rating must be reported with an explanation of such transition composite score and rating.

Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on December 30, 2015, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement herewith.

The above revisions to the proposed rule require revisions to the Compliance Requirements section of the Local Governments section of the previously published Regulatory Flexibility Analysis as follows:

2. COMPLIANCE REQUIREMENTS:

In September 2015, Governor Andrew Cuomo formed the Common Core Task Force to undertake a comprehensive review of the current status and use of the Common Core State Standards and assessments in New York and to recommend potential reforms to the system. Following multiple meetings, the Task Force reviewed and discussed information presented at public sessions and submitted through the website, and has made a number of recommendations regarding the implementation of the Common Core Standards.

On December 10, 2015, the Task Force released their report, affirming that New York must have rigorous, high quality education standards to improve the education of all of our students and hold our schools and districts accountable for students' success but recommended that the Common Core standards be thoroughly reviewed and revised consistent as reflected in the report and that the State assessments be amended to reflect such revisions. In addition, the Task Force recommended that until the new system is fully phased in, the results from the grades 3-8 English language arts and mathematics State assessments and the use of any State-provided growth model based on these tests or other State assessments shall not have consequence for teachers or students. Specifically, Recommendation 21 from the Task Force's Final Report ("Report") provides as follows:

"…State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers. The transition phase shall last until the start of the 2019-2020 school year".

Proposed amendment

In an effort to implement the Task Force's recommendation, the proposed amendment makes the following changes:

• Two new sections 30-2.14 and 30-3.17 are added to provide for a four year transition period for annual professional performance reviews (APPRs) while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model. During the transition period, the Commissioner will determine transition scores and ratings that will replace the original scores and HEDI ratings computed under the existing provisions of Subpart 30-2 and 30-3 of the Regents Rules for evaluation of teachers and principals whose APPRs are based, in whole or in part, on State assessments in grades 3-8 ELA and mathematics assessments and State-provided growth scores on Regents examinations. The transition period will end with the 2018-2019 school year.

• Section 30-2.14 relates to evaluations under Education Law § 3012-c and Subpart 30-2 of the Regents Rules and applies to evaluations for the 2015-2016 school year only, as school districts conduct the negotiations necessary to come into compliance with new Education Law § 3012-d. Section 30-3.17 relates to evaluations under Education Law § 3012-d, and applies to evaluations for the 2015-2016 through the 2018-2019 school year.

• During the transition period, transition scores and HEDI ratings will replace the scores and HEDI ratings for teachers and principals whose HEDI scores are based, in whole or in part, on State assessments in grades 3-8 ELA or mathematics (including where State-provided growth scores are used) or on State-provided growth scores on Regents examinations.

• In the case of evaluations conducted pursuant to Education Law § 3012-c and new § 30-2.14, the overall transition scores and ratings will be determined based upon the remaining subcomponents of the annual professional performance review that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations.

• In the case of evaluations pursuant to Education Law § 3012-d and new § 30-3.17, transition scores and ratings for the student performance category and the overall transition rating will be determined using the scores/ratings in the subcomponents of the student performance category that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations or, in instances where no scores/ratings in the subcomponents of the student performance category can be generated, for the 2016-2017 school year through the 2018-2019 school year, a back-up SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.

• State provided growth scores will continue to be computed for advisory purposes only and overall HEDI ratings will continue to be provided to teachers and principals based on such growth scores. However, during the transition period, only the transition score and rating will be used for purposes of Education Law §§ 3012-c and 3012-d and Subparts 30-2 and 30-3, and for purposes of employment decisions, including tenure determinations, individual employment records and for purposes of proceedings under Education Law §§ 3020-a and 3020-b and teacher and principal improvement plans.

• However, for purposes of public reporting of aggregate data and disclosure to parents pursuant to subdivision 10 of section 3012-c of the Education Law, the original composite score and rating and the transition composite score and rating must be reported with an explanation of such transition composite score and rating.

Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on December 30, 2015, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement herewith.

The above revisions to the proposed rule require revisions to the Reporting, Recordkeeping, and Other Compliance Requirements, and Professional Services section of the previously published Rural Area Flexibility Analysis as follows:

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

In September 2015, Governor Andrew Cuomo formed the Common Core Task Force to undertake a comprehensive review of the current status and use of the Common Core State Standards and assessments in New York and to recommend potential reforms to the system. Following multiple meetings, the Task Force reviewed and discussed information presented at public sessions and submitted through the website, and has made a number of recommendations regarding the implementation of the Common Core Standards.

On December 10, 2015, the Task Force released their report, affirming that New York must have rigorous, high quality education standards to improve the education of all of our students and hold our schools and districts accountable for students' success but recommended that the Common Core standards be thoroughly reviewed and revised consistent as reflected in the report and that the State assessments be amended to reflect such revisions. In addition, the Task Force recommended that until the new system is fully phased in, the results from the grades 3-8 English language arts and mathematics State assessments and the use of any State-provided growth model based on these tests or other State assessments shall not have consequence for teachers or students. Specifically, Recommendation 21 from the Task Force's Final Report ("Report") provides as follows:

"…State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers. The transition phase shall last until the start of the 2019-2020 school year".

Proposed amendment

In an effort to implement the Task Force's recommendation, the proposed amendment makes the following changes:

• Two new sections 30-2.14 and 30-3.17 are added to provide for a four year transition period for annual professional performance reviews (APPRs) while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model. During the transition period, the Commissioner will determine transition scores and ratings that will replace the original scores and HEDI ratings computed under the existing provisions of Subpart 30-2 and 30-3 of the Regents Rules for evaluation of teachers and principals whose APPRs are based, in whole or in part, on State assessments in grades 3-8 ELA and mathematics assessments and State-provided growth scores on Regents examinations. The transition period will end with the 2018-2019 school year.

• Section 30-2.14 relates to evaluations under Education Law § 3012-c and Subpart 30-2 of the Regents Rules and applies to evaluations for the 2015-2016 school year only, as school districts conduct the negotiations necessary to come into compliance with new Education Law § 3012-d. Section 30-3.17 relates to evaluations under Education Law § 3012-d, and applies to evaluations for the 2015-2016 through the 2018-2019 school year.

• During the transition period, transition scores and HEDI ratings will replace the scores and HEDI ratings for teachers and principals whose HEDI scores are based, in whole or in part, on State assessments in grades 3-8 ELA or mathematics (including where State-provided growth scores are used) or on State-provided growth scores on Regents examinations.

• In the case of evaluations conducted pursuant to Education Law § 3012-c and new § 30-2.14, the overall transition scores and ratings will be determined based upon the remaining subcomponents of the annual professional performance review that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations.

• In the case of evaluations pursuant to Education Law § 3012-d and new § 30-3.17, transition scores and ratings for the student performance category and the overall transition rating will be determined using the scores/ratings in the subcomponents of the student performance category that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations or, in instances where no scores/ratings in the subcomponents of the student performance category can be generated, for the 2016-2017 school year through the 2018-2019 school year, a back-up SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.

• State provided growth scores will continue to be computed for advisory purposes only and overall HEDI ratings will continue to be provided to teachers and principals based on such growth scores. However, during the transition period, only the transition score and rating will be used for purposes of Education Law §§ 3012-c and 3012-d and Subparts 30-2 and 30-3, and for purposes of employment decisions, including tenure determinations, individual employment records and for purposes of proceedings under Education Law §§ 3020-a and 3020-b and teacher and principal improvement plans.

• However, for purposes of public reporting of aggregate data and disclosure to parents pursuant to subdivision 10 of section 3012-c of the Education Law, the original composite score and rating and the transition composite score and rating must be reported with an explanation of such transition composite score and rating.

Job Impact Statement

The purpose of proposed rule is necessary to implement the recommendations of the Common Core Task Force which were released on December 10, 2015. The Task Force recommended that until the new Learning Standards and State assessments are fully phased in, the results from the State assessments (Grades 3-8 English language arts and mathematics) and the

use of any State-provided growth model based on these tests or other State assessments shall not have evaluative consequence for teachers or students. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on December 31, 2015, the State Education Department (SED) received the following comments:

1. COMMENT:

We still need to address the over-testing and inefficiency in the testing of High School students in order to assess teachers. I work in a vocational high school, and the students have to submit to two pre-tests and post tests in addition to their curriculum based testing and licensure testing. The APPR system needs to be modified, streamlined- reconsidered. It is not in the best interest of students. Some students are forced to repeat identical tests in home schools and in BOCES programs for the purpose of data. It creates a chaotic and disheartening beginning and end to the school year, does not instill love of learning, does not exemplify humanism or good teaching and learning.

DEPARTMENT RESPONSE:

Neither Education Law § 3012-d nor Subpart 30-3 of the Rules of the Board of Regents require districts/BOCES to use pre-assessments as baseline data when setting SLO growth targets. In fact, the Department has released a number of resources to assist districts and BOCES in minimizing assessments used in APPR, including the SLO 103 webinar, available on EngageNY at: https://www.engageny.org/ resource/slo-103-for-teachers which provides guidance to districts and BOCES on using historical data and past performance trends to set growth targets. On the contrary, this guidance suggests that districts/BOCES may use a student's prior academic history as the baseline and is not required to use pre-assessments.

Additionally, Teach More, Test Less Testing Transparency Reports were provided to all districts and BOCES in New York State in 2014 wherein the Department reviewed each district's/BOCES' APPR plans and notified them of places in their APPR plans where they could take local action to reduce assessments in their district/BOCES. These letters are available on the NYSED website at: http://usny.nysed.gov/rttt/test/teachers-leaders/teach-more-test-less/home.html.

Moreover, pursuant to Section 30-3.4(b)(1)(iii) of the Rules of the Board of Regents, districts or BOCES who want to avoid additional testing in their APPR plans may use SLOs based on school- or BOCES-wide, group, team or linked results from the grades 4 or 8 State Science exams or Regents exams for grades/subjects where no State assessment or Regents exam currently exists.

2. COMMENT:

While I am appreciative of the proposed moratorium prohibiting the use of Grades 3-8 State Assessments for evaluation purposes, I am encouraging you to rethink its use at all. We can't ignore that the opt-out movement in our State was motivated by student performance being linked to teacher/principal evaluation. There is minimal evidence to support that State Assessments being linked to evaluations improve student achievement. On the other hand, having 100% participation on an appropriately designed assessment will improve instructional practice, especially when combined with an effective data analysis process. Decoupling student performance from evaluations will reverse the opt-out trend, thereby positively impacting student achievement.

DEPARTMENT RESPONSE:

Education Law § 3012-d(4)(a)(1)(a) requires that State-provided growth scores be used for evaluative purposes, where available, to provide a score and rating in the required subcomponent of the Student Performance category. Further, that same provision of the Education Law also requires that State assessments be used as the underlying evidence for Student Learning Objectives (SLOs) where they exist. A statutory amendment would be needed to permanently decouple State assessments from evaluations.

3. COMMENT:

There is a lot of discussion at the state and federal level about local control. I was disappointed that it appears that the regulations went too far and took some of that local control away. To ''forbid'' the use of 3-8 test results took an option away that my district negotiated and had approved. In good faith we negotiated building-wide growth scores K-6 based upon the 3-6 assessments and 7-12 building-wide growth scores based upon the 7-8 State Assessments and Regents Exams. I believe the Growth scores we received were the best number despite the flawed implementation of the reform agenda and despite tests that are certainly not perfect. Had the emergency regulations provided the option to use or not use results from the 3-8 tests, that would have been more in line with respecting local control, and I would have proposed to continue with our plan as is and other Districts could have chosen differently if desired.

DEPARTMENT RESPONSE:

The regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents is intended to implement Recommendation #21 of the Governor's Common Core Task Force, which was comprised of a diverse and highly qualified group of education officials, teachers, parents, the Governor and state legislative representatives. Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model." The regulation implements the recommendation of the Governor's Task Force, which was to prohibit the use 3-8 Common Core assessments for evaluative purposes. See also Response to Comment #4.

4. COMMENT:

It seems that the regulations are in conflict with the law, if the law dictates that 3-8 tests are to be administered and used. for informational purposes only at this point, what would the ramifications be from the state level if a District chose to adhere to the law as opposed to the regulations by using the 3-8 results anyway, if I am correct that there is a conflict between the two?

DEPARTMENT RESPONSE:

The Board of Regents have authority under Education Law section 207 to establish rules to carry into effect the laws and policies of the State relating to education. In this instance, subsequent to the enactment of Chapter 56 of the Laws of 2015, which enacted new § 3012-d of the Education Law to establish new requirements for annual professional performance reviews (APPRs) of teachers and principals, there was a profound change in circumstances that could not have been anticipated by the Legislature and the Governor at the time of enactment,. The Governor appointed a Common Core Task Force, comprised of a diverse and highly qualified group of education officials, teachers, parents, and state legislative representatives, to review the Common Core standards and assessments that form the underpinning of the APPRs. The Common Core Task Force recommended that the State Education Department thoroughly review both the Common Core standards and assessments and the State-provided growth model used to measure growth on those assessments, and that there be a transition period established during which the grades 3-8 assessments would not be used for high stakes decisions for teachers or students. Specifically, the Task Force's Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model."

Newly appointed Commissioner MaryEllen Elia then recommended to the Board of Regents that the State Education Department undertake a searching review of the Common Core standards, Grades 3-8 Common Core ELA and Math assessments and the State provided growth model used to measure student growth on those assessments for APPR purposes, to be conducted over a four year period. At that point strict application of new § 3012-d, which relied heavily on the State provided growth model to evaluate the performance of teachers and provided, became untenable and could have resulted in unjust results and hardship to teachers and principals that could not have been intended by the Legislature when it enacted section 3012-d. Because the APPR is a continuous process involving collective negotiations between school districts and BOCES and the employee organizations representing classroom teachers and building principals, immediate action was necessary to eliminate the potential for hardship and unjust results if the State provided growth model continued to be used for high stakes decisions involving teachers and students while it, the growth model, as well as the Common Core standards and assessments were being reviewed and potentially modified. Based on Recommendation No. 21 of the Common Core Task Force, which included representation from the Governor and the Legislature, the Board of Regents adopted the regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents to avoid having the State-provided growth model used for high stakes determinations for teachers and principals in circumstances that the Legislature could not have anticipated and under which the Legislature could not have intended it be used for high stakes.

Furthermore, sections 30-2.14 and 30-3.17 of the Rules of the Board of

Regents do not eliminate the requirement that districts and BOCES implement their APPR plans in their entirety during the transition period. Scores and ratings pursuant to all of the measures found in the approved APPR plan, including State-provided growth scores and measures that utilize the grades 3-8 ELA and math State assessments, will continue to be calculated and provided to educators for advisory purposes and districts/BOCES will continue to report this information to the State, and the State will continue to report aggregate data to the public. The regulations merely take scores for those portions of the evaluation related to State-provided growth scores and SLOs based on State assessments out of the evaluation for employment purposes, including tenure determinations, individual employment records and teacher and principal improvement plans.

5. COMMENT:

To be forced to now potentially purchase and administer an additional assessment so close to the State Assessments is both a financial burden on the district and is counterproductive to the edict from the State to reduce student assessments.

DEPARTMENT RESPONSE:

Sections 30-2.14 and 30-3.17 as adopted by the Board of Regents during their February 2016 meeting do not require the creation of alternate SLOs in the 2015-16 school year. Based on feedback received from the field, an amendment was made to the proposed rule at the February meeting to clarify that the alternate SLO requirement is only applicable to APPRs completed during the remainder of the transition period (2016-17 through 2018-19 school years). Moreover, the regulation does not require districts/BOCES to purchase and/or create new assessments. On the contrary, districts/BOCES should consider utilizing any other assessments that are currently being administered in classrooms when developing alternate SLOs during the transition period. In many instances, the use of formative and diagnostic assessments in combination with a summative assessment or performance task are already in use and can be authentic and meaningful measures of student performance. Further, districts/BOCES have the option to use school- or district-wide measures based on State assessments that are not the grades 3-8 ELA and math State assessments, e.g., the grades 4 and 8 State Science assessments or the Regents examinations.

6. COMMENT:

Those of us that complied and successfully negotiated 3012-d plans should be able to use or not use results from 3-8 state tests if desired, and we should not be forced to buy or create other assessments. If the Commissioner/Board of Regents is able to permit Districts the option to use Rubric scores only, great;. but please do not take away the option to use the State Provided Growth Scores and/or results from the 3-8 state tests if a District so desires to do so. Perhaps the transitional regulations could/should state that approved 3012-d plans remain in effect ''as is'' unless otherwise re-negotiated at the local level based on any permitted options that are identified.

DEPARTMENT RESPONSE:

See Responses to Questions 3 and 5.

7. COMMENT:

Commenters request a one-year moratorium for districts that effectively negotiated and have approved by the State Education Department § 3012-d plans that include: no additional testing for districts that have approved § 3012-d plans; districts whose § 3012-d plans contain group goals and/or individual teacher scores based on state assessment or growth scores should only utilize the teacher/principal observation portion of the matrix included in a teacher or principal's final rating if state assessments are not permitted; back-up or new SLO's whose targets are set after December 1, 2015 should not be allowed for the 2015-2016 school year; for the 2016-2017 school year, information on new testing or additional tests that must be purchased must be given to districts prior to budget development; there should be an acknowledgement that districts with approved § 3012-d plans negotiated in good faith with teacher and administrative unions, and that given compliance with the new law the districts should be given wider discretion in implementation of our plans for at least the 2015-2016 school year; an unintended consequence of not including NYSED Science examination in the definition of state assessments is that some plans will have a total focus on 4 and 8 science as a group measure for all teachers and principals, this needs to be addressed; and there must be material changes to the regulations that address the points above in relation to § 3012-d.

DEPARTMENT RESPONSE:

Sections 30-2.14 and 30-3.17 as adopted by the Board of Regents during their February 2016 meeting do not require the creation of alternate SLOs in the 2015-16 school year. Based on feedback from the field, an amendment was made to the proposed rule at the February Regents meeting to clarify that the alternate SLO requirement is only applicable to APPRs completed during the remainder of the transition period (2016-17 through 2018-19 school years). Additionally, districts and BOCES will continue to have the ability to submit material changes to their APPR plans during the transition period. Thus, if they desire to make changes to the measures specified in the APPR plan in light of the transition regulations, they are able to do so. For districts/BOCES will APPR plans already approved pursuant to Education Law § 3012-d in the 2015-16 school year, the description of the alternate SLOs that will be used during the transition period shall be submitted to the Department on a supplemental form to their currently approved § 3012-d APPR plans (rather than re-opening their plan in the Review Room portal). These districts/BOCES can submit the supplemental form to the Department any time between March 2, 2016 and March 1, 2017 for implementation in the 2016-17 school year. Thus, there is a significant amount of time being provided to districts and BOCES to consider what measures they wish to use prior to implementation for the 2016-17 school year.

Regarding the commenter's concern relating to overreliance on the grades 4 and 8 State Science assessments, as indicated in the response to Comment #3, Recommendation #21 from the Governor's Common Core Task Force called for the exclusion of grades 3-8 ELA and math State assessments aligned to the Common Core, and did not include any reference to State Science assessments.

8. COMMENT:

The emergency regulations relating to 3012-d transition scores (30-3.17) require that, where no scores/ratings in the student performance category can be generated because they rely on State assessments, a new ''back up'' SLO must be developed using approved assessments other than State assessments. Compliance with this new requirement poses numerous challenges:

a. The term ''back up SLO'' is misplaced as the new SLO is being developed based upon an assessment not used previously for this purpose. Districts have not budgeted for acquisition or development of approved assessments or necessarily provided training on the use of the assessment.

b. It is much too late in the school year to measure a full year of growth based upon a new assessment.

c. Because students must still take state assessments and Regents, adding new assessments for APPR purposes increases testing time for students.

• Whether directly or indirectly, high school teachers have been evaluated at least partially on their Regents results long before the advent of Common Core. Their SLO's and the core business of the high schools support this model. Excluding non-Common Core Regents exams mid-year without a clear and vetted alternative, or adding an additional assessment for evaluation purposes, fundamentally shifts the focus of the high school program.

There is similar confusion regarding the use of ''back up SLOs'' in the revisions to 3012-c regulations. New section 30-2.14 (b)(2) states that, for the transition period, the composite APPR score and rating shall be generated based upon the ''remaining subcomponents of the annual professional performance review that are not based on State assessments and/or a State-provided growth score on Regents examinations'' and that this score ''shall include the use of any back up SLOs developed by the district/BOCES in lieu of the State-provided growth score on State assessments.'' Before this revision, back up SLOs for teachers or principals whose student growth measure rested upon State assessments/Regents had to be based upon those assessments. There would be no ''back up'' SLO based upon another assessment. It is unclear whether 30-2.14(b)(2) now requires acquisition of a State approved assessment and development of a new SLO, or whether these individuals' APPR composite scores would be based solely on the remaining components that do not rely on State assessments or Regents.

DEPARTMENT RESPONSE:

Regarding the term "back-up SLO," the Department agrees. Based on feedback received from the field, section 30-3.17 of the Rules of the Board of Regents specifically uses the term "alternate SLO" instead of "back-up SLO" when describing the measures that must be selected by districts and BOCES during the 2016-17 through 2018-19 school years in the event that there are no remaining student performance measures for an educator after the results of the grades 3-8 ELA and math State assessments and any State-provided growth scores are excluded from the calculation of transition scores and ratings.

Additionally, the Department agrees with your concerns over developing alternate SLOs during the 2015-16 school year. Based on feedback from the field, the amended version of section 30-3.17 adopted by the Board of Regents at their February meeting only requires the creation of alternate SLOs during the 2016-17 through 2018-19 school years.

With respect to your concerns regarding additional testing, please see the response to Comment #5.

Regarding the use of Regents assessments as part of Student Performance measures for teachers whose courses end in those assessments, sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents do not preclude the use of Regents assessments as the underlying evidence for SLOs (see, e.g., Question 10 of the Department's APPR Transition FAQ, available on EngageNY at: https:// www.engageny.org/resource/guidance-

on-new-york-s-annual- professional-performance-review-law-and-regulations).

Alternate SLOs do not require additional testing. On the contrary, districts/BOCES should consider utilizing any other assessments that are currently being administered in those classrooms. In many instances, the use of formative and diagnostic assessments in combination with a summative assessment or performance task are already in use and can be authentic and meaningful measures of student performance. However, please remember that all non-State assessments must be approved through the Assessment RFQ.

Further, districts/BOCES have the option to use school- or district-wide measures based on State assessments that are not the grades 3-8 ELA and math State assessments, e.g., the grades 4 and 8 State Science assessments or the Regents examinations.

Regarding the commenter's concern of having to create both back-up SLOs and alternate SLOs during the transition period, the Department is considering this feedback and will take these comments into consideration.

9. COMMENT:

The transition period scoring regulations will result in multiple categories of APPRs for 2015/16 under 3012-c and 3012-d: Teachers/principals whose score includes observations; Student growth based upon State approved assessments; and Student achievement based upon State approved assessments (3012-c); Teachers/principals whose score includes observations; and Student achievement based upon State approved assessments (3012-c); Teachers/principals whose score is based solely upon observations (3012-c); Teachers/principals whose score is based upon observations; and Student growth based upon State approved assessments in accordance with previously negotiated APPR (3012-d); and Teachers/principals whose score is based upon observations; and Student growth based upon newly developed SLOs using State approved assessments in order to comply with 30-3.17. We are concerned that the lack of consistency in the APPR measures for 2015/16 will raise questions of equity for our teachers and principals.

DEPARTMENT RESPONSE:

The regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents is intended to implement Recommendation #21 of the Governor's Common Core Task Force, which was comprised of a diverse and highly qualified group of education officials, teachers, parents, and state representatives. Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model.

The law requires that districts' and BOCES' APPR plans require that the same measures be used for all teachers of the same grade and subject across a district for the required subcomponent of the Student Performance category. Therefore, the calculation of transition scores and ratings must include the same components for all teachers of the same grade and subject, but not necessarily across the district.

10. COMMENT:

At the local level, school districts and BOCES have worked tirelessly to maintain working relationships with negotiating units through the iterations of APPR. This is becoming increasingly difficult, reflecting the uncertainty over the years in APPR.

DEPARTMENT RESPONSE:

The Department is committed to continuing its work with stakeholder groups as the State completes the transition to higher learning standards through new State assessments aligned to higher learning standards, and a revised State-provided growth model and hopes this transition period will provide some stability in APPR.

11. COMMENT:

For school districts issued waivers, it will now be impossible to reach consensus on 3012-d compliant APPR with local negotiating units as it is very unclear what the rules will be. We recommend that currently issued waivers be deemed effective at least through the 2015/16 school year without the need for further application.

DEPARTMENT RESPONSE:

The Department has notified each superintendent in a district with an approved hardship waiver who is implementing an APPR plan pursuant to Education Law § 3012-c that such Waiver has been automatically extended through August 31, 2016. Notice of the Hardship Waiver approval status for applicable districts has also been posted on each district's APPR plan page on the Department's "Approved APPR Plans" webpage at http://usny.nysed.gov/rttt/teachers-leaders/plans/. Thus, the Department believes this concern has been addressed.

12. COMMENT:

Substituting alternative assessments for state assessments in the development of student learning objectives (SLOs) may actually require an increase in budgets spent on assessments and/or reallocate limited fiscal resources to fund the development of new teacher-developed SLO assessments. Given the Task Force's recommendation of the review and the revision of the Common Core Learning Standards, we believe that developing any new assessments liked to standards still under review will continue to erode our communities' confidence in our system.

DEPARTMENT RESPONSE:

The regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents is intended to implement Recommendation #21 of the Governor's Common Core Task Force, which was comprised of a diverse and highly qualified group of education officials, teachers, parents, and state representatives. Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model.

As for your concerns relating to additional testing and/costs to create an alternate SLO, please see the Response to No. 5.

13. COMMENT:

Declare a full moratorium on Common Core-derived NYSED assessment data for the purpose of student/teacher evaluation, including related local assessments. Such a moratorium shall remain in effect until such time as the newly designed assessments are proven valid, reliable and aligned to the new standards. No assessments should be utilized until the revised standards have been adopted.

DEPARTMENT RESPONSE:

See response to Comment #3.

14. COMMENT:

Implement a teacher and principal evaluation that will be based on the subcomponents currently defined and assessed through state-approved rubrics during the moratorium. These components will shift in weight from 50 to 100 points and require a supervisor to use a range of student assessment data as a component of teacher/principal evaluation.

DEPARTMENT RESPONSE:

The regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents is intended to implement Recommendation #21 of the Governor's Common Core Task Force, which was comprised of a diverse and highly qualified group of education officials, teachers, parents, and state representatives. Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model.

The Department is requiring districts/BOCES to use an alternate SLO for the 2016-2017 school year through the 2018-2019 school year because the Department believes that consistent with the intent of Education Law § 3012-d, it is important to measure a teacher's or principal's performance based on both student performance and observations. As a result, the Department is requiring districts/BOCES to develop alternate SLOs in lieu of the State-provided growth scores. However, based on feedback from the field, alternate SLOs will not be required in the 2015-2016 school year.

15. COMMENT:

Convene a panel of nationally recognized experts in the areas of teaching and learning, curriculum development and psychometrics. The panel should also include seasoned practitioners, including teachers, principals and superintendents. The charge to the panel should be to create a meaningful teacher and principal evaluation system that links practice to measurable student outcomes.

DEPARTMENT RESPONSE:

Section 30-3.1(e) of the Rules of the Board of Regents indicates that the Board of Regents shall convene an assessment and evaluation workgroup or workgroups, comprised of stakeholders and experts in the field to provide recommendations to the Board of Regents on assessments and evaluations that could be used for annual professional performance reviews in the future.

16. COMMENT:

On behalf of our school district clients, I would like to ask for clarification in the regulations about districts' duties to continue to create and implement back-up SLOs based on the now-prohibited State assessments. That is, since the 3-8 State assessments will still be used for advisory scores, should there not be enough students in a class taking the Math/ELA exams for the teacher to receive a SPGS, does the district then have

to do the original version of a back-up SLO based on that State assessment? I would ask that the Department please consider the increased workload this will have for districts if the answer is yes, since beginning next year districts would then have to do 2 back-up SLOs for each of their grades 3-8 teachers and principals – a State assessment back up SLO and an alternate, non-State assessment back-up SLO.

DEPARTMENT RESPONSE:

Back-up SLO requirements are not specifically addressed in sections 30-2.14 or 30-3.17 of the Rules of the Board of Regents. The Department will take this feedback into consideration when making revisions to the APPR Transition Guidance document, which the Department anticipates releasing shortly.

17. COMMENT:

Please do not require that § 3012-d districts use back-up SLO's for Grades 3-8 ELA and Math. § 3012-d districts should be allowed to use 100% observation for 2015-16. This would provide those of us that went ahead and did the right thing by seeking approval for § 3012-d, to have equity with § 3012-c districts.

DEPARTMENT RESPONSE:

Based on feedback received from the field, the regulations were amended to eliminate the requirement for alternate SLOs for the 2015-2016 school year. The amended version of section 30-3.17 adopted by the Board of Regents at their February meeting only requires the creation of alternate SLOs during the 2016-17 through 2018-19 school years. Thus, during the 2015-16 school year, if after excluding the results of the grades 3-8 ELA and math State assessments and any State-provided growth scores, there are no remaining student performance measures, then educator's evaluations will be based only on the observation/school visit category. Also, see Response to Comment #16.

18. COMMENT:

While I commend the Regents for your responsiveness, I hope that you might consider that the widely stated concerns about the use of student assessment data are not limited to Common Core tests, and are in fact prevalent with any measure of student performance that is used to evaluate teachers and principals. As such, I ask that the Board of Regents consider suspending the use of all student performance measures, including those based on any State assessment, Regents exam, or other State approved assessment, both for the current school year and throughout the transition period.

Within a given school or district, some educators will be evaluated based on student performance results and others will not. This creates an inequity and inconsistency that will surely fuel the negativity and divisiveness related to the APPR. This inequity will seemingly be resolved next year and through the transition period, wherein the regulations require the development of an alternate SLO, using State-approved assessments other than grades 3?128;8 ELA or math State assessments. While the results of diagnostic formative assessments may be used for these alternate SLOs, it must be considered that most districts selected such assessments for use in screening students for academic intervention, and may have intentionally excluded them from previous APPR plans. Not only were these assessments not designed to be used as a measure of educator effectiveness; to use them for this purpose would lead to the same level of anxiety and resistance that has surfaced with grades 3-?128;8 ELA and math assessments. As a result, the valuable and informative student learning data from these assessments may be compromised, particularly as a result of parents opting out, thereby limiting districts' ability to use this data for its intended purpose – to monitor student progress in learning.

DEPARTMENT RESPONSE:

See Responses to No. 3, 5 and 9. In addition, when creating an alternate SLO during the transition period, school districts, boards of cooperative educational services should consider this comment when selecting an assessment for the SLO.

19. COMMENT:

The regulations allow for the development of SLOs, including school or district?128;wide measures, using other State assessments such as the grades 4 and 8 State Science assessments or Regents examinations. While this may seem to be a viable alternative for the transition period, it must be considered that the SLO target setting process is typically arbitrary, nonscientific, and not based on a statistically valid or reliable growth model. While superintendents must assure the Department that all SLO growth targets represent a minimum of one year of expected growth, districts must establish these targets with a narrow and limited data set, without access to comparable data for similar students, and without the ability to conduct the robust statistical analysis that is inherent in the State-provided growth scores. In fact, we find it most disconcerting that the most reliable and valid measure of student performance available – that of the State?128;provided growth score – must be set aside entirely, and replaced with locally?128;determined academic goals that do not meet any industry standard of statistical reliability or validity.

DEPARTMENT RESPONSE:

Education Law § 3012-d(4)(a)(1) requires that Student Learning Objectives be used in instances where there is no State-provided growth score available. During the transition period, an educators' transition scores and ratings cannot use State-provided growth scores, SLOs must be used. The Department has developed a number of resources around developing meaningful SLOs. These resources are available on EngageNY at: https://www.engageny.org/resource/ student-learning-objectives.

20. COMMENT:

Thank you for providing the field with the FAQ dated January 15, 2016. If possible, could you please further clarify the following points?

1. In the document, it states that for the 15-16 school year, grades 4-8 will have state growth scores excluded, but the score should still be reported to the teacher as an advisory score. If the school district has not finished writing back-up SLOs, should they continue this process, since the score will be excluded and the back-up is for ''emergency'' purposes only? This would seem to be one of the undue burdens mentioned in the FAQ,

2. Until 2019, the document states, the teachers who receive state growth scores, should be given the score in an advisory capacity, but should create a SLO or have a group measure based on one of the alternative measures. Should the teacher not have a high enough ''n'' to generate the advisory growth score, does the teacher still need the back-up SLO based on the state assessment in addition to the SLO or group metric described in the guidance, in order to provide the teacher with the advisory score? Again, this seems to fall in the undue burden category, but we would like clarification to guarantee we are in compliance.

3. In all previous guidance, teachers could only be linked to tests that were given in their building. Language often said ''school-wide'', in the FAQ dated 1/15/16 there are references to ''district-wide measures''. Does this mean a district could link a k-3 building to the 4th grade science exam or all of the students to the results of the regents exams? If a district-wide measure is a possibility, is it only allowable during the transition period or will districts be allowed to link all teachers, who do not receive a growth score, to a district measure after 2019?

DEPARTMENT RESPONSE:

Regarding items 1 and 2, back-up SLO requirements are not specifically addressed in sections 30-2.14 or 30-3.17 of the Rules of the Board of Regents. The Department will take this feedback into consideration when making revisions to the APPR Transition Guidance document.

Regarding item #3, the provisions relating to district-wide measures in the Department's APPR Transition FAQ refer only to alternate SLOs used during the transition period, not traditional SLOs used for teachers whose courses do not end in a State assessment. The Department will take the commenter's feedback into consideration when revising the APPR Guidance documents.

21. COMMENT:

As a veteran first grade teacher, I think it is terribly unfair that based on the current plan, my scores are based on a different set of evaluative criteria than others in my kindergarten through 4th grade building. I have test scores beyond my control AND an observation while colleagues have an observation alone. Shouldn't we all just be observed - especially this year?

DEPARTMENT RESPONSE:

The law requires that APPR plans use the same measures for all teachers of the same grade and subject across a district for the required subcomponent of the Student Performance category. Thus, the calculation of transition scores and ratings must include the same measures for all teachers of the same grade and subject.

Additionally, please see the response to Comment #9.

22. COMMENT:

I recognize and appreciate the right of the state education department to change the APPR procedures. However, doing so at mid-year is neither fair nor morally right. I believe that any changes made this year in the APPR process should not go into effect until next year. For this year we should go under the old APPR procedures. As teachers, we have planned and prepared for the APPR process as it has been and was until the recent changes.

DEPARTMENT RESPONSE:

Based on feedback received from the field, an amendment was made to the proposed rule at the February meeting to clarify that alternate SLOs are only applicable to APPRs completed during the 2016-17 through 2018-19 school years. Therefore, no changes will be needed to approve plans for use in the 2015-2016 school year.

However, sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents still require your district/BOCES to calculate and provide to teachers the original scores and ratings calculated using all of the measures specified in the approved APPR plan for advisory purposes. Thus, the Department hopes that these original scores and ratings will continue to be used at the local level for advisory purposes.

23. COMMENT:

I do not think it is fair for some teachers to receive only an observation score. All teachers should only receive an observation score. We should not just use the regents and science for exams for a score. Aren't they student assessments, too that are illegal to use?

DEPARTMENT RESPONSE:

Please see responses to Comments 9 and 18.

24. COMMENT:

Please remove this rating system for ALL teachers until we can agree on something else.

DEPARTMENT RESPONSE:

Education Law § 3012-d requires that all teachers be evaluated using a comprehensive evaluation system. A statutory change would be needed to eliminate the teacher and principal evaluation system.

25. COMMENT:

If made permanent in its current form, § 30-3.17 will prohibit districts from using student performance on State Assessments for any teacher or principal evaluative purpose. This, in and of itself, is violative of Education Law § 3012-d(1) which provides that, "for a teacher whose course ends in a state-created or administered test for which there is a state-provided growth model, such teacher shall have a state-provided growth score based upon such model…" Further, under § 3012-d(2), where a course ends in a State-created or administered test, but there is no State-provided growth score, "such assessment must be used as the underlying assessment for such SLO."

As I understand the transition regulations, the State will continue to utilize a growth model and calculate growth scores, § 30-3.17(b)(1), which may be used only for advisory purposes and not to determine the mandatory student performance subcomponent rating, § 30-3.17(b)(2). This is in direct conflict with the statute. Even if it is argued that, the "advisory" score is not based upon an approved, State-provided growth model and, therefore, it is not a true State-provided growth score, State Assessments must nevertheless be used for the SLO. The corrosive effect of agency mandated violations of § 3012-d on the future acceptance of APPR cannot be underestimated, especially where, as I understand, the "need to comply with the statute," is the stated basis for the additional testing burdens placed on districts discussed below. All evaluations under the emergency regulations will be subject to attack, as none will comply with the law.

DEPARTMENT RESPONSE:

The regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents is intended to implement Recommendation #21 of the Governor's Common Core Task Force, which was comprised of a diverse and highly qualified group of education officials, teachers, parents, and state legislative representatives. Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model. The regulations implement these recommendations.

26. COMMENT:

Under the emergency regulations, Districts must either (1) use additional State-approved assessments to create SLOs; or (2) generate SLOs based upon group goals on State-created assessments that are far removed from the teachers being evaluated. Although the State believes that most districts already use State-approved assessments for some purpose, many districts, such as my own, have taken heed of the statutory proscriptions on unnecessary additional testing and have eliminated most, if not all, non-State assessments. For many, additional assessments are confined to the primary grades, K-2, which have no State-created assessments. Thus, under the emergency regulations, many districts may be forced to use scarce resources – in a year where the tax cap is 0.12%, to cover the cost of purchasing and implementing new assessments. More importantly, the emergency regulations increase the amount of testing that is required for our students, as the State Assessments will not be eliminated during the transition period. We note that the requirements of 8 NYCRR § 30-3.3(a)(3), limiting the amount of time that may be devoted to test preparation have not been lifted.

DEPARTMENT RESPONSE:

Please see response to Comments #5 and 9.

27. COMMENT:

We understand that the emergency regulations allow back-up SLOs based upon group goals using State-approved assessments, which may include third-party assessments and State-created assessments such as the eighth grade science assessment or Regents examinations. Again for districts that do not already use State-approved, third party assessments, this could create a new testing burden. The alternative is to evaluate teachers using assessments far removed from the teachers' actual classrooms.

While unions in many districts have warmed up to group goals using the State Assessments to help reduce testing and disruptions to instruction, these assessments are close to the teachers at the elementary level. It is easy to explain to a third grade teacher that their efforts directly influence the performance of students in the fourth or fifth grade. It is almost inconceivable that they would accept that a third grade teacher would be held accountable to a Regents examination or that the eighth grade science teachers would have the burden of accountability for the entire 3-8, or potentially K-8, population. Yes, SLOs are controlled by the Superintendent, but districts must still negotiate APPR agreements with the unions.

DEPARTMENT RESPONSE:

Please see response to Comments #5 and 9. Also, an elementary teacher could be evaluated based on the 4th and 8th grade State science assessments.

28. COMMENT:

Regardless of whether districts are able to negotiate new agreements, the integrity and validity of such agreements would be questionable at best. What are superintendents to say to unions and the community who object to additional burdensome testing or to the fundamental unfairness of evaluating a teacher on the performance of students years removed from their classroom? "We must comply with the law." If this is the case, how do we respond when we are asked why we must when the emergency regulations, themselves, do not? "We just need to get through this so we don't lose our funding." If this is case, why are we using scarce and valuable resources for the sake of compliance without educational benefit? If § 3012-d agreements are not negotiated, how will the State justify withdrawing funding for failure to comply with the law, when the emergency regulations do not?

DEPARTMENT RESPONSE:

Please see the response to Comment #5 and 9.Regarding withholding of a district's State aid, Education Law § 3012-d(11) specifically links implementation of 3012-d and Subpart 30-3 to a district's State aid increase. A legislative amendment would be needed to decouple State aid from the evaluation system.

29. COMMENT:

Rather than force districts to comply, for compliance sake, with regulations that themselves do not comply with statutory requirements, we ask that the State either (1) reconsider allowing State Assessments to be used for SLOs, noting that the Commissioner has the statutory authority to determine and develop the goal-setting process and can use this authority to develop a fair transition; or (2) revise the regulations so that districts with no alternatives to State Assessments for Student Performance in their APPR plans can revert to using the Teacher Observation or School Visit category only. It is preferable to develop a transition that is compliant with the statute, but if we are to be out of compliance with the statute, why do so in a way that places additional burdens on districts and further risks the integrity of APPR?

DEPARTMENT RESPONSE:

Please see the Responses to Comments #3, 5 and 9.

30. COMMENT:

We are concerned that certain language now appearing in 30-2.14(c) and 30-3.17(b), if adopted on a permanent basis, could have the impact of severely reducing the utility of the teacher or principal improvement plan, and will deprive educational leaders of an important tool in developing effective teachers and principals.

Specifically, our concern is that there is a strong possibility that the regulatory language identified above will be used to support an argument that from now on an improvement plan can only be prepared and implemented for a classroom teacher or principal after a transition rating is derived and that rating is either Developing or Ineffective.

DEPARTMENT RESPONSE:

Districts/BOCES must use transition scores and ratings when making determinations regarding whether an educator will be placed on an improvement plan.

However, the Department believes that all educators will benefit from the development of Personal Professional Development Plans (PPDPs). We recommend that districts work collaboratively with each of their educators to ensure the development of individualized PPDPs for every teacher and principal in order to support continuous improvements for all educators, regardless of their rating.

31. COMMENT:

Commenters expressed concern about the proposed language for regulations 30-2.14(c) and 30-3.17(b). The specific language in the Regents Rules that causes us concern is this:

§ 30-2.14(c) "The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's transition composite score and rating."

§ 30-3.17(b) "The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's overall transition composite rating."

Commenters do not take issue with SED's intention of blocking use of

the statutorily-determined rating under 3012-c and 3012-d, but think this language could be used by teacher associations to argue that improvement plans can only be initiated under these limited circumstances. Commenters suggest that the problem can be avoided if the Final Rules are adopted with the following language:

8 NYCRR 30-2.14(c): "During the transition period defined by this section, whether the preparation of a teacher or principal improvement plan is required by subsection 4 of section 3012-c of the Education Law shall be determined by the teacher's or principal's transition composite score and rating." Or, alternately, "The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's transition composite score and rating for subsection 4 of section 3012-c of the Education Law. This does not prevent a teacher or principal improvement plan from being required under other circumstances unrelated to composite scores and ratings.''

8 NYCRR 30-3.17(b): "During the transition period defined by this section, whether the preparation of a teacher or principal improvement plan is required by subsection 15 of section 3012-d and subsection 4 of section 3012-c of the Education Law shall be determined by the teacher's or principal's overall transition composite rating." Or, alternately, "The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's overall transition composite rating. This does not prevent a teacher or principal improvement plan from being required under other circumstances unrelated to composite scores and ratings."

DEPARTMENT RESPONSE:

The Department will consider clarifying the intent of the regulation in its next iteration of the APPR transition guidance.

32. COMMENT:

By removing the State Assigned Building Score, the largest weighted part of a teacher's SLO is no longer included. Out of a teaching staff of about 300, only 23 teachers have SLOs solely based on students they instruct in a course ending in a RE. All others had had SLOs based in the 3-8 testing or had a Building Score coupled with RE results. I'm having difficulty not only in the idea of removing the Building Score for a large portion of my HS staff as mentioned above, but also assigning SLOs to less than 10% of my staff that do not have the Building Score in their SLO equation. There is a clear equity issue with this. An option might be to reopen and complete a material change to Part 2 of our APPR plan. Alternately, you could just remove the Student Performance section for everyone this year.

DEPARTMENT RESPONSE:

See Response to Comments No. 9.

33. COMMENT:

With more and more plans calling for building-wide measures- and in the future especially with district-wide measures, there will be a great number of questions on who can actually score assessments in the district.

RESPONSE:

The Department will consider this comment as it moves forward and districts/BOCES should consider this when developing their APPR plans.

EMERGENCY RULE MAKING

Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer Tuberculosis Tests

I.D. No. EDU-10-16-00017-E

Filing No. 495

Filing Date: 2016-05-17

Effective Date: 2016-05-23

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

Action taken: Amendment of section 64.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6527(6)(c), 6902(1), 6909(4)(c); L. 2015, ch. 464

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Chapter 464 of the Laws of 2015, which took effect on February 18, 2016. The amendment to the Education Law made by Chapter 464 of the Laws of 2015 allows registered professional nurses to administer other tests to detect or screen for tuberculosis infections, pursuant to non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner, in addition to purified protein derivative (PPD) tests that registered professional nurses currently administer pursuant to such orders. These other and newer tests may be more effective than the purified protein derivative (PPD) tests in detecting or screening for tuberculosis infections.

The proposed amendment was adopted as an emergency action at the February 22-23, 2016 Regents meeting, effective February 23, 2016, and has now been adopted as a permanent rule at the May 16-17, 2016 Regents meeting. Pursuant to State Administrative Procedure Act (SAPA) section 203(1), the earliest effective date of the permanent rule is June 1, 2016, the date the Notice of Adoption will be published in the State Register. However, the February emergency rule will expire on May 22, 2016, 90 days after its filing with the Department of State on February 23, 2016. If the rule were to lapse, registered professional nurses could not continue to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner to administer tuberculosis tests. Emergency action is therefore necessary for the preservation of the public health and general welfare to ensure that the proposed rule adopted by emergency action at the February 2016 Regents meeting remains continuously in effect until the effective date of its permanent adoption, so that registered professional nurses can continue to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner to administer tuberculosis tests.

Subject: Execution by registered professional nurses of non-patient specific orders to administer tuberculosis tests.

Purpose: Authorize administration of other tests to detect/screen for tuberculosis in addition to purified protein derivative (PPD) tests.

Text of emergency rule: Section 64.7 of the Regulations of the Commissioner of Education is amended, effective May 23, 2016, as follows:

64.7 Administration of immunizations, emergency treatment of anaphylaxis, [purified protein derivative (PPD) mantoux tuberculin skin] *tuberculosis* tests, human immunodeficiency virus (HIV) tests, opioid related overdose treatments and hepatitis C tests pursuant to non-patient specific orders and protocols.

(a) . . .

(b) . . .

[(c) Purified protein derivative (PPD) mantoux tuberculin skin tests.

(1) Pursuant to section 6909(5) of the Education Law, a registered professional nurse shall be authorized to execute the order to administer purified derivative (PPD) mantoux tuberculin skin tests, pursuant to a non-patient specific order and protocol prescribed and ordered by a licensed physician or a certified nurse practitioner, provided the order and protocol meets the requirements of paragraph (2) of this subdivision.

(2) Order and protocol.

(i) The registered professional nurse shall either maintain or ensure the maintenance of a copy of the non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner, which authorizes a registered professional nurse to execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test, in accordance with the requirements of paragraph (1) of this subdivision. The order prescribed in subparagraph (ii) of this paragraph shall incorporate a protocol that meets the requirements of subparagraph (iii) of this paragraph. Such order and protocol shall be considered a record of the patient who has received a purified protein derivative (PPD) mantoux tuberculin skin test and maintained as a record for the period of time prescribed in section 29.2(a)(3) of this Title.

(ii) The order shall authorize one or more named registered professional nurses, or registered professional nurses who are not individually named but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, to execute the order to administer purified protein derivative (PPD) mantoux tuberculin skin tests for a prescribed period of time. In instances in which the registered professional nurses are not individually named in the order, but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, such registered professional nurses shall not be authorized by such order to execute the order to administer purified protein derivative (PPD) mantoux tuberculin skin tests outside of such employment or contract. The order shall contain but shall not be limited to the following information:

(a) identification of the purified protein derivative (PPD) mantoux tuberculin skin test;

(b) the period of time that the order is effective, including the beginning and ending dates;

(c) the name and license number of the registered professional nurse(s) authorized to execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test; or the name of the entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services with whom registered professional nurses who are not individually named are employed or under

contract to execute the order to administer the prescribed purified protein derivative (PPD) mantoux tuberculin skin test;

(d) in instances in which registered professional nurses are not individually named in the order, but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, the order shall contain a statement limiting registered professional nurses to execute the order to administer purified protein derivative (PPD) mantoux tuberculin skin tests only in the course of such employment or pursuant to such contract; and

(e) the name, license number, and signature of the licensed physician or certified nurse practitioner that has issued the order.

(iii) The protocol, incorporated into the order prescribed in subparagraph (ii) of this paragraph, shall require the registered professional nurse to meet the following requirements:

(a) The registered professional nurse shall ensure that each potential recipient is assessed for untoward conditions that would preclude purified protein derivative (PPD) mantoux tuberculin skin testing and each recipient's record of the purified protein derivative (PPD) mantoux tuberculin skin test with manufacturer and lot number or a potential recipient's refusal to be tested shall be documented in accordance with section 29.2(a)(3) of this Title.

(b) The registered professional nurse shall be responsible for having emergency anaphylaxis treatment agents, related to syringes and needles available at the purified protein derivative (PPD) mantoux tuberculin skin testing site, except in an emergency as determined by the Commissioner of Health, a county commissioner of health, or a county public health director.

(c) When the recipient of the test is legally capable of consenting to the test, the registered professional nurse may execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test only after the recipient is adequately informed in writing as prescribed in this clause and consents to the purified protein derivative (PPD) mantoux tuberculin skin test. In the case of minors or other recipients incapable of consenting to the test, the registered professional nurse may execute the order to administer the purified protein derivative (PPD) mantoux tuberculin skin test only after the person legally responsible for the recipient of the test is adequately informed in writing as prescribed in this clause and consents to the purified protein derivative (PPD) mantoux tuberculin skin test. Prior to the registered professional nurse executing the order to administer the test, the recipient of the test, or the person legally responsible for the recipient of the test in the case of minors or other recipients incapable of consenting to the test, shall be informed in writing about the potential side effects of and adverse reactions to the test, and the need for test evaluation within 48 to 72 hours after the test is administered.

(d) The registered professional nurse shall ensure that the recipient, or other person legally responsible for the recipient when the recipient is a minor or otherwise incapable of consenting to the test, is provided with a signed certificate of purified protein derivative (PPD) mantoux tuberculin skin testing and results, with the recipient's name, date of the test, address where the test was administered, administering nurse, manufacturer and lot number and recommendations for future tests recorded thereon. With the consent of the recipient or a person legally responsible for the recipient when the recipient is a minor or otherwise incapable of consenting, the registered professional nurse shall ensure that this information is communicated to the recipient's primary health care provider if one exists.

(e) Each registered professional nurse shall ensure that a record of all persons so testing including the recipient's name, date of the test, address where the test was administered, administering nurse, test results, manufacturer, lot number and recommendations for future tests is recorded and maintained in accordance with section 29.2(a)(3) of this Title.]

(c) Tuberculosis tests.

(1) As used in this subdivision, tuberculosis tests means one or more laboratory or point of care tests approved by the federal Food and Drug Administration to detect or screen for tuberculosis infections, including, but not limited to, tuberculin skin tests (purified protein derivative [PPD] tests).

(2) A registered professional nurse may administer tuberculosis tests pursuant to a written non-patient specific order and protocol prescribed or ordered by a licensed physician or a certified nurse practitioner, provided that the requirements of this subdivision are met.

(3) Order and protocol.

(i) The non-patient specific order shall include, at a minimum, the following:

(a) the name, license number and signature of the licensed physician or certified nurse practitioner who orders or prescribes the non-patient specific order and protocol;

(b) the name of the specific tuberculosis tests to be administered;

(c) a protocol for administering the ordered tuberculosis tests or a specific reference to a separate written protocol for administering the ordered tuberculosis tests, which shall meet the requirements of subparagraph (ii) of this paragraph;

(d) the period of time that the order is effective, including the beginning and ending dates;

(e) a description of the group(s) of persons to be treated; and

(f) the name and license number of the registered professional nurse(s) authorized to execute the non-patient specific order and protocol to administer the tuberculosis tests; or the name of the entity that employs or contracts with registered professional nurses to execute the non-patient specific order and protocol, provided that the registered professional nurse(s) execute the non-patient specific order and protocol only in the course of such employment or pursuant to such contract and provided further that the entity that is legally authorized to employ or contract with registered professional to provide nursing services.

(ii) The written protocol, incorporated into the order prescribed in subparagraph (i) of this paragraph, shall, at a minimum, require the registered professional nurse(s) to ensure that:

(a) each potential recipient is assessed, pursuant to criteria in the protocol, for conditions that would qualify or preclude him or her from receiving the ordered tuberculosis tests;

(b) informed consent for administering the ordered tuberculosis tests or disclosing the tuberculosis tests results to a third party (if applicable) has been obtained pursuant to the criteria in the protocol from the recipient, or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for the recipient;

(c) any tuberculosis test results are disclosed and any recommendations for follow up care are made in accordance with the criteria in the protocol; and

(d) the administration of the ordered tuberculosis tests and the test results are documented in the recipient's medical record in accordance with the criteria in the protocol and that documentation relating to tuberculosis testing is maintained in accordance with section 29.2(a)(3) of this Title;

(e) additional requirements for tuberculin skin tests. If the non-patient specific order authorizes a tuberculin skin tests, the written protocol shall, in addition to the foregoing:

(1) require the registered professional nurse to have emergency anaphylaxis treatment agents available at the tuberculin skin testing site, except in an emergency determined by the Commissioner of Health, New York City Commissioner of the Department of Health and Mental Hygiene, a county commissioner of health, or a county public health director;

(2) require that, prior to administering the tuberculin skin tests, the potential test recipient or a person authorized pursuant to law to consent to health care for the recipient receives written information regarding the potential side effects and/or adverse reactions to the tuberculin skin tests and the appropriate course of action in the event of an adverse reaction to the test;

(3) require that, prior to administering the tuberculin skin tests, the potential test recipient or his or her authorized representative is informed of the need for a test evaluation within 48 to 72 hours after the test is administered;

(4) require that the test recipient or recipient's authorized representative receives a signed certificate of tuberculin skin testing, which shall include the results with the recipient's name, date of tests, address where the tests was administered, administering nurse, manufacturer and lot numbers for the tuberculin solution administered, as well as any recommendations for future tests; and

(5) require that the name of the manufacturer and lot number of the tuberculin solution that was administered to the recipient are documented in his or her medical record, along with the date that the tuberculin skin tests was administered and the date that the test results were evaluated.

(d) . . .

(e) . . .

(f) . . .

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-10-16-00017-EP, Issue of March 9, 2016. The emergency rule will expire July 15, 2016.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority

to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Paragraph (c) of subdivision (6) of 6527 of the Education Law, as amended by Chapter 464 of the Laws of 2015, authorizes registered professional nurses to administer other tests to detect or screen for tuberculosis infections, pursuant to a non-patient specific order and protocol prescribed by a licensed physician in accordance with regulations of the Commissioner of Education, in addition to purified protein derivative (PPD) tests that registered professional nurses currently administer pursuant to such orders.

Subdivision (1) of section 6902 of the Education Law defines the practice of the profession of nursing for registered professional nurses.

Paragraph (c) of subdivision (4) of section 6909 of the Education Law, as amended by Chapter 464 of the Laws of 2015, authorizes registered professional nurses to administer other tests to detect or screen for tuberculosis infections, pursuant to a non-patient specific order and protocol prescribed by a certified nurse practitioner in accordance with regulations of the Commissioner of Education, in addition to purified protein derivative (PPD) tests that registered professional nurses currently administer pursuant to such orders.

2. LEGISLATIVE OBJECTIVES:

Amendments to paragraph (c) of subdivision (6) of section 6527 and paragraph (c) of subdivision (4) of section 6909 of the Education Law were enacted to protect the public health in New York State by increasing access to potentially more effective newer tuberculosis tests for detecting or screening for tuberculosis infections. Paragraph (c) of subdivision (6) of section 6527 of the Education Law authorizes registered professional nurses to administer other tests to detect or screen for tuberculosis infections, pursuant to a non-patient specific order and protocol prescribed by a licensed physician in accordance with regulations of the Commissioner of Education, in addition to purified protein derivative (PPD) tests that registered professional nurses currently administer pursuant to such orders. Paragraph (c) of subdivision (4) of section 6909 of the Education Law authorizes registered professional nurses to administer other tests to detect or screen for tuberculosis infections, pursuant to a non-patient specific order and protocol prescribed by a certified nurse practitioner in accordance with regulations of the Commissioner of Education, in addition to purified protein derivative (PPD) tests that registered professional nurses currently administer pursuant to such orders.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to establish uniform requirements for registered professional nurses to meet when executing non-patient specific orders to administer tuberculosis tests. Specifically, the proposed amendment establishes the requirements for the types of information that should be included in these written non-patient specific orders and the requirements that should be included in the written protocols for a registered professional nurse to follow when administering tuberculosis tests pursuant to a non-patient specific order prescribed by a licensed physician or a certified nurse practitioner. The proposed amendment is needed to implement the requirements of paragraph (c) of subdivision (6) of section 6527 and paragraph (c) of subdivision (4) of section 6909 of the Education Law, as amended by Chapter 464 of the Laws of 2015.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Cost to private regulated parties: No mandatory costs.

(d) Cost to the regulatory agency: None.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty, responsibility or other mandate upon local governments.

6. PAPERWORK:

The proposed amendment does not impose any paperwork mandates because it does not require any licensed physician or certified nurse practitioner to issue non-patient specific orders or protocols and does not specifically require registered professional nurses to administer tuberculosis tests pursuant to a non-patient specific order and protocol. The proposed amendment will not impose any reporting, recordkeeping or other requirements on licensed physicians and certified nurse practitioners; they choose to issue a non-patient specific order and protocol for registered professional nurses to administer tuberculosis tests. If licensed physicians or certified nurse practitioners choose to issue such non-patient specific orders, the proposed amendment requires them to, inter alia, issue these orders and related protocols in writing. The proposed amendment also requires copies of the non-patient specific orders and protocols to be maintained in the patient's medical records. In addition, registered professional nurses must document that they administered the ordered tuberculosis tests.

7. DUPLICATION:

There are no other state or federal requirements on the subject matter of this proposed amendment. Therefore, the proposed amendment does not duplicate other existing state or federal requirements, and is necessary to implement Chapter 464 of the Laws of 2015.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 464 of the Laws of 2015. There are no viable significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

There are no relevant federal standards for authorizing registered professional nurses to execute non-patient specific orders to administer tuberculosis tests as prescribed by a licensed physician or certified nurse practitioner. Since there are no applicable federal standards, the proposed amendment does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 464 of the Laws of 2015. The proposed amendment does not impose any compliance schedules on regulated parties or local governments.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to implement Chapter 464 of the Laws of 2015, which authorizes registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner to administer other tests to detect or screen for tuberculosis infections, in addition to purified protein derivative (PPD) tests that registered professional nurses currently administer pursuant to such orders. These other and newer tuberculosis tests may be more effective than the purified protein derivative (PPD) tests in detecting or screening for tuberculosis infections. The proposed amendment establishes the types of information that must be included in the written non-patient specific orders and the requirements that must be set forth in the written protocols, for registered professional nurses to follow when administering tuberculosis tests.

The proposed amendment will not impose any reporting, recordkeeping, or other compliance requirements or costs, or have any adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to all New York State registered professional nurses who administer tuberculosis tests pursuant to a non-patient specific order and protocol, including registered professional nurses 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 miles or less. Of the approximately 285,000 registered professional nurses who are registered to practice in New York State, approximately 30,200 reported that their permanent address of record is in a rural county of New York State.

The proposed amendment will also apply to all New York State certified nurse practitioners who issue non-patient specific orders and protocols to authorize registered professional nurses to administer tuberculosis tests, including nurse practitioners 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 miles or less. Of the approximately 20,000 certified nurse practitioners who are registered to practice in New York State, approximately 2,500 reported that their permanent address of record is in a rural county of New York State.

Additionally, the proposed rule will apply to all New York State licensed physicians who issue non-patient specific orders and protocols to authorize registered professional nurses to administer tuberculosis tests, including licensed physicians 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 miles or less. Of the approximately 93,300 licensed physicians registered to practice in New York State, approximately 2,550 reported that their permanent address of record is in a rural county of New York State.

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

The proposed amendment to subdivision (c) of section 64.7 of the Regulations of the Commissioner of Education implements Chapter 464

of the Laws of 2015. On February 18, 2016, the effective date of Chapter 464 of the Laws of 2015, registered professional nurses will be authorized to administer, pursuant to non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner, other tests to detect or screen for tuberculosis infections, in addition to the purified protein derivative (PPD) tests registered professional nurses are currently permitted to administer pursuant to such orders. These other and newer tuberculosis tests may be more effective than the purified protein derivative (PPD) tests in detecting or screening for tuberculosis infections.

The proposed amendment authorizes registered professional nurses to execute non-patient specific orders and protocols, ordered by a licensed physician or certified nurse practitioner, for administering tuberculosis tests. The proposed amendment will not require any licensed physician or certified nurse practitioner to issue non-patient specific orders or protocols and does not specifically require registered professional nurses to administer tuberculosis tests pursuant to a non-patient specific order and protocol. The proposed amendment will not impose any reporting, recordkeeping or other compliance requirements, or professional services requirements, on health care providers in rural areas, unless a licensed physician or certified nurse practitioner issues a non-patient specific order and protocol for registered professional nurses to administer tuberculosis tests. The proposed amendment of subdivision (c) of section 64.7 of the Regulations of the Commissioner of Education require licensed physicians and certified nurse practitioners to issue non-patient specific orders and protocols in writing. Copies of the non-patient specific orders and protocols must be maintained in the patient's medical records. In addition, registered professional nurses must document that they administered the ordered tuberculosis tests.

3. COSTS:

The proposed amendment will not impose any costs on any licensed physician, certified nurse practitioner, registered professional nurse, or other party. Neither paragraph (c) of subdivision (4) of section 6909 nor paragraph (c) of subdivision (6) of section 6527 of the Education Law impose any obligations on licensed physicians or certified nurse practitioners to issue non-patient specific orders and protocol for tuberculosis tests.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 464 of the Laws of 2015. The statutory requirements do not make exceptions for individuals who live or work in rural areas. Thus, the Department has determined that the proposed amendment's requirements should apply to all licensed physicians, certified nurse practitioners and registered professional nurses in New York State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing all parties having an interest in the practice of certified nurse practitioners and registered professional nurses. These organizations included the State Board for Nursing and professional associations representing the nursing profession and nursing educators and the medical professions. These groups have members who live or work or provide nursing education in rural areas.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement Chapter 464 of the Laws of 2015, and, therefore, the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The State Education Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16 of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment implements Chapter 464 of the Laws of 2015, which authorizes registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner to administer other tests to detect or screen for tuberculosis infections, in addition to purified protein derivative (PPD) tests that registered professional nurses currently administer pursuant to such orders. These other and newer tuberculosis tests may be more effective than the purified protein derivative (PPD) tests in detecting or screening for tuberculosis infections.

The proposed amendment implements specific statutory requirements. Any impact on jobs and employment opportunities created by establishing criteria for authorizing registered professional nurses to administer tuberculosis tests, in addition to the purified protein derivative (PPD) tests, pursuant to a non-patient specific written order and written protocol prescribed by a licensed physician or a certified nurse practitioner is attributable to the statutory requirement.

Because it is evident from the nature of the proposed amendment, which implements specific statutory requirements and directives, that it will have no adverse impact on jobs or employment opportunities attributable to its adoption or only a positive impact, no affirmative steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Teacher Certification in Career and Technical Education

I.D. No. EDU-22-16-00006-EP

Filing No. 493

Filing Date: 2016-05-17

Effective Date: 2016-05-17

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

Proposed Action: Amendment of section 80-3.5 of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed amendment to section 80-3.5 is necessary to provide an additional pathway option for a Transitional A Certificate in the CTE subjects for candidates who are issued a full license to teach by the Bureau of Proprietary School Supervision and who have two years of teaching experience under such license.

A Notice of Proposed Rule Making will be published in the State Register on June 1, 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), would be the July 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.

Emergency action is therefore necessary to allow those who are issued a full license by the Bureau of Proprietary School Supervision (BPSS) and who have two years of teaching in the license area in a New York State licensed private career school to take advantage of the additional pathway before the start of the 2016-17 school year. Specifically, the New York City school district has expressed concern in filling CTE teaching positions at the secondary level, and this amendment would allow the district to take advantage of this option in hiring for the 2016-17 school year.

Subject: Teacher certification in career and technical education.

Purpose: Establishes a new pathway for Transitional A certificate.

Text of emergency/proposed rule: 1. A new paragraph (4) is added to subdivision (b) of section 80-3.5 of the Regulations of the Commissioner of Education shall be amended by adding new paragraph (4), effective May 17, 2016, to read as follows:

(4) Option D: The requirements of this paragraph are applicable to candidates who will seek an initial certificate and who possess a full license as a teacher issued by the Department pursuant to section 126.6(f) of this Title in the career and technical field in which a certificate is sought. The candidate shall meet the requirements in each of the following subparagraphs:

(i) Education. The candidate shall complete at least two clock hours of coursework or training regarding the identification and reporting suspected child abuse or maltreatment, in accordance with requirements of section 3004 of the Education Law. In addition, the candidate shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the department pursuant to Subpart 57-2 of this Title. A candidate who applies for the certificate on or after December 31, 2013, shall also complete at least six clock hours, of which at least three hours

must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 of the Education Law.

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination content specialty test(s) in the area of the certificate.

(iii) Experience. The candidate shall have at least two years of satisfactory teaching experience under a full license issued by the Department pursuant to section 126.6(f) of this Title, in a New York State licensed private career school in the certificate area or in a closely related subject area acceptable to the department.

(iv) Employment and support commitment. The candidate shall submit evidence of having a commitment for three years of employment as a teacher in grades 7 through 12 in a career or technical field in a public or nonpublic school or BOCES, which shall include a mentored experience for the first year that will consist of daily supervision by an experienced teacher during the first 20 days of teaching, except that such mentoring shall not be required if the candidate has two years of satisfactory employment as a teacher of students in grades 7 through 12 in a public or nonpublic school or BOCES.

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 August 14, 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 207(not subdivided) grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Education Law 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies.

Education Law 3001(2) establishes the qualifications of teachers in the State and requires that such teachers possess a teaching certificate issued by the Department.

Education Law 3004(1) authorizes the Commissioner to promulgate regulations, subject to approval by the Board of Regents, regulations governing the certification and examination requirements for teachers employed in public schools.

Education Law 3006(1) authorizes the Commissioner to issue temporary certificates to teachers.

Education Law 3009 prohibits school district monies from being used to pay the salary of an unqualified teacher.

2. LEGISLATIVE OBJECTIVES:

The proposed rule establishes a new certification pathway in career and technical education (CTE) for candidates who hold a full license to teach in licensed private career schools issued by the Department and is necessary to address the issue of school districts and Board of Cooperative Educational Services (BOCES) that have expressed difficulty in filling CTE positions at the secondary level.

3. NEEDS AND BENEFITS:

Currently, a Transitional A certificate in a specific career and technical subject is issued to permit the employment of an individual in a specific career and technical education title who does not meet the requirements for an initial certificate, but who possesses the requisite occupational experience. This certificate is valid for three years, and the candidate would complete the additional requirements for an initial certificate during the three years.

The three options available for a Transitional A certificate at this time are:

- Option A. Candidates who possess an associate's degree (or its equivalent) in the career and technical field in which the certificate is sought, and who have at least two years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought;
- Option B. Candidates who possess a high school diploma or its equivalent (but who do not possess an associate's degree or its equivalent in the certificate area), and who have at least four years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought; and
- Option C. Candidates who possess an associate's degree (or its equivalent) in the career and technical field in which the certificate is sought, and who have at least two years of documented and satisfactory teaching experience at the postsecondary level (excluding experience as a teaching assistant) in the career and technical education subject for which a certificate is sought.

All three Transitional A pathways described above also require:

(1) Coursework training in identification of and reporting of child abuse or maltreatment, school violence prevention and intervention, and harassment, bullying and discrimination prevention and intervention;

(2) Evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Exam Content Specialty Test in the area of the certificate; and

(3) An employment and support commitment—the candidate must submit evidence of having a commitment for three years of employment as a teacher in a public or nonpublic school or BOCES, which includes a mentored experience for the first year consisting of daily supervision by an experienced teacher during the first 20 days. However, the mentoring is not required if the candidate has two years of satisfactory employment as a teacher of students in grades 7-12 in a public or nonpublic school or BOCES.

Proposed Amendment:

Based on feedback from the field, it appears that several school districts are having difficulty finding CTE teachers to fill positions at the secondary level, particularly the New York City School District. While the Board of Regents has already made the effort to expand the pathways available to obtain a Transitional A certificate in 2013, and this amendment would create an additional pathway for those who hold a full license to teach in licensed private career schools, who also have two years of teaching experience under such license.

In order to address this issue, the proposed amendment to 80-3.5 of the Regulations of the Commissioner of Education allows additional opportunities for individuals with specific technical and career experience to obtain a Transitional A teaching certificate in their area of expertise, thus allowing them to teach CTE subjects at the secondary school level. This will help to increase the supply of qualified, certified teachers in the career and technical education field to satisfy the increasing demand for those teachers.

4. COSTS:

a. Costs to State government: The amendment does not impose any costs on State government, including the State Education Department.

b. Costs to local government: The amendment does not impose any costs on local government, including school districts and BOCES.

c. Costs to private regulated parties: The amendment does not impose any costs on private regulated parties.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon any local government.

6. PAPERWORK:

Any candidate interested in pursuing this certification pathway must submit evidence of having a commitment for three years of employment as a teacher in a public or nonpublic school or BOCES, which includes a mentored experience for the first year consisting of daily supervision by an experienced teacher during the first 20 days.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards concerning registration and CTLE requirements for certificate holders.

10. COMPLIANCE SCHEDULE:

It is anticipated that schools districts and BOCES will be able to comply by the stated effective date.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed amendment implements the recommendations of the Common Core Task Force which recommended that until the new Learning Standards and State assessments are fully phased in, the results from the State assessments (Grades 3-8 English language arts and mathematics) and the use of any State-provided growth model based on these tests or other State assessments shall not have evaluative consequence for teachers or students. The rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to

ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

In September 2015, Governor Andrew Cuomo formed the Common Core Task Force to undertake a comprehensive review of the current status and use of the Common Core State Standards and assessments in New York and to recommend potential reforms to the system. Following multiple meetings, the Task Force reviewed and discussed information presented at public sessions and submitted through the website, and has made a number of recommendations regarding the implementation of the Common Core Standards.

On December 10, 2015, the Task Force released their report, affirming that New York must have rigorous, high quality education standards to improve the education of all of our students and hold our schools and districts accountable for students' success but recommended that the Common Core standards be thoroughly reviewed and revised consistent as reflected in the report and that the State assessments be amended to reflect such revisions. In addition, the Task Force recommended that until the new system is fully phased in, the results from the grades 3-8 English language arts and mathematics State assessments and the use of any State-provided growth model based on these tests or other State assessments shall not have consequence for teachers or students. Specifically, Recommendation 21 from the Task Force's Final Report ("Report") provides as follows:

"…State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers. The transition phase shall last until the start of the 2019-2020 school year".

Proposed amendment

In an effort to implement the Task Force's recommendation, the proposed amendment makes the following changes:

• Two new sections 30-2.14 and 30-3.17 are added to provide for a four year transition period for annual professional performance reviews (APPRs) while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model. During the transition period, the Commissioner will determine transition scores and ratings that will replace the original scores and HEDI ratings computed under the existing provisions of Subpart 30-2 and 30-3 of the Regents Rules for evaluation of teachers and principals whose APPRs are based, in whole or in part, on State assessments in grades 3-8 ELA and mathematics assessments and State-provided growth scores on Regents examinations. The transition period will end with the 2018-2019 school year.

• Section 30-2.14 relates to evaluations under Education Law § 3012-c and Subpart 30-2 of the Regents Rules and applies to evaluations for the 2015-2016 school year only, as school districts conduct the negotiations necessary to come into compliance with new Education Law § 3012-d. Section 30-3.17 relates to evaluations under Education Law § 3012-d, and applies to evaluations for the 2015-2016 through the 2018-2019 school year.

• During the transition period, transition scores and HEDI ratings will replace the scores and HEDI ratings for teachers and principals whose HEDI scores are based, in whole or in part, on State assessments in grades 3-8 ELA or mathematics (including where State-provided growth scores are used) or on State-provided growth scores on Regents examinations.

• In the case of evaluations conducted pursuant to Education Law § 3012-c and new § 30-2.14, the overall transition scores and ratings will be determined based upon the remaining subcomponents of the annual professional performance review that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations.

• In the case of evaluations pursuant to Education Law § 3012-d and new § 30-3.17, transition scores and ratings for the student performance category and the overall transition rating will be determined using the scores/ratings in the subcomponents of the student performance category that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations or, in instances where no scores/ratings in the subcomponents of the student performance category can be generated, a back-up SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.

• State provided growth scores will continue to be computed for advisory purposes only and overall HEDI ratings will continue to be provided to teachers and principals based on such growth scores. However, during the transition period, only the transition score and rating will be used for purposes of Education Law §§ 3012-c and 3012-d and Subparts 30-2 and 30-3, and for purposes of employment decisions, including tenure determinations and for purposes of proceedings under Education Law §§ 3020-a and 3020-b and teacher and principal improvement plans.

• However, for purposes of public reporting of aggregate data and disclosure to parents pursuant to subdivision 10 of section 3012-c of the Education Law, the original composite score and rating and the transition composite score and rating must be reported with an explanation of such transition composite score and rating.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement the recommendations of the Common Core Task Force. Because Education Law §§ 3012-c and 3012-d apply to all school districts and BOCES in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

7. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all school districts 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:

In September 2015, Governor Andrew Cuomo formed the Common Core Task Force to undertake a comprehensive review of the current status and use of the Common Core State Standards and assessments in New York and to recommend potential reforms to the system. Following multiple meetings, the Task Force reviewed and discussed information presented at public sessions and submitted through the website, and has made a number of recommendations regarding the implementation of the Common Core Standards.

On December 10, 2015, the Task Force released their report, affirming that New York must have rigorous, high quality education standards to improve the education of all of our students and hold our schools and districts accountable for students' success but recommended that the Common Core standards be thoroughly reviewed and revised consistent as reflected in the report and that the State assessments be amended to reflect such revisions. In addition, the Task Force recommended that until the new system is fully phased in, the results from the grades 3-8 English language arts and mathematics State assessments and the use of any State-provided growth model based on these tests or other State assessments shall not have consequence for teachers or students. Specifically, Recommendation 21 from the Task Force's Final Report ("Report") provides as follows:

"…State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers. The transition phase shall last until the start of the 2019-2020 school year".

Proposed amendment

In an effort to implement the Task Force's recommendation, the proposed amendment makes the following changes:

• Two new sections 30-2.14 and 30-3.17 are added to provide for a four year transition period for annual professional performance reviews (APPRs) while the State completes the transition to higher learning standards

through new State assessments aligned to the higher learning standards, and a revised State-provided growth model. During the transition period, the Commissioner will determine transition scores and ratings that will replace the original scores and HEDI ratings computed under the existing provisions of Subpart 30-2 and 30-3 of the Regents Rules for evaluation of teachers and principals whose APPRs are based, in whole or in part, on State assessments in grades 3-8 ELA and mathematics assessments and State-provided growth scores on Regents examinations. The transition period will end with the 2018-2019 school year.

• Section 30-2.14 relates to evaluations under Education Law § 3012-c and Subpart 30-2 of the Regents Rules and applies to evaluations for the 2015-2016 school year only, as school districts conduct the negotiations necessary to come into compliance with new Education Law § 3012-d. Section 30-3.17 relates to evaluations under Education Law § 3012-d, and applies to evaluations for the 2015-2016 through the 2018-2019 school year.

• During the transition period, transition scores and HEDI ratings will replace the scores and HEDI ratings for teachers and principals whose HEDI scores are based, in whole or in part, on State assessments in grades 3-8 ELA or mathematics (including where State-provided growth scores are used) or on State-provided growth scores on Regents examinations.

• In the case of evaluations conducted pursuant to Education Law § 3012-c and new § 30-2.14, the overall transition scores and ratings will be determined based upon the remaining subcomponents of the annual professional performance review that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations.

• In the case of evaluations pursuant to Education Law § 3012-d and new § 30-3.17, transition scores and ratings for the student performance category and the overall transition rating will be determined using the scores/ratings in the subcomponents of the student performance category that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations or, in instances where no scores/ratings in the subcomponents of the student performance category can be generated, a back-up SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.

• State provided growth scores will continue to be computed for advisory purposes only and overall HEDI ratings will continue to be provided to teachers and principals based on such growth scores. However, during the transition period, only the transition score and rating will be used for purposes of Education Law §§ 3012-c and 3012-d and Subparts 30-2 and 30-3, and for purposes of employment decisions, including tenure determinations and for purposes of proceedings under Education Law §§ 3020-a and 3020-b and teacher and principal improvement plans.

• However, for purposes of public reporting of aggregate data and disclosure to parents pursuant to subdivision 10 of section 3012-c of the Education Law, the original composite score and rating and the transition composite score and rating must be reported with an explanation of such transition composite score and rating.

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 implement the recommendations of the Common Core Task Force. Because Education Law §§ 3012-c and 3012-d apply to all school districts and BOCES in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

The proposed amendment implements the recommendations of the Common Core Task Force, formed in September 2015, by Governor Andrew Cuomo to undertake a comprehensive review of the current status and use of the Common Core State Standards and assessments in New York and to recommend potential reforms to the system. Comments on the proposed amendment were also solicited from the Rural Advisory Committee, whose members live and work in rural areas of the State.

Job Impact Statement

The purpose of proposed rule is necessary to implement the recommendations of the Common Core Task Force which were released on December 10, 2015. The Task Force recommended that until the new Learning Standards and State assessments are fully phased in, the results from the State assessments (Grades 3-8 English language arts and mathematics) and the use of any State-provided growth model based on these tests or other State assessments shall not have evaluative consequence for teachers or students. 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

Licensure of Occupational Therapy Assistants (OTAs)

I.D. No. EDU-22-16-00008-EP
Filing No. 497
Filing Date: 2016-05-17
Effective Date: 2016-05-18

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

Proposed Action: Amendment of sections 76.6, 76.7, 76.8, 76.9 and 76.10 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 7902-a, 7903, 7904-a, 7905(2), 7906(4) and 7907; L. 2015, ch. 470

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

Specific reasons underlying the finding of necessity: The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Chapter 470 of the Laws of 2015, which adds Education Law sections 7902-a, and 7904-a, and amends Education Law sections 7903, 7905, 7906, and 7907, and takes effect on May 18, 2016. This amendment to the Education Law codifies and defines the practice of occupational therapy assistants, establishes requirements for licensure, and requires at least one occupational therapy assistant to serve on the State Board for Occupational Therapy. Pursuant to Chapter 470, the practice of an occupational therapy assistant is defined as the provision of occupational therapy and client related services under the direction and supervision of an occupational therapist or a licensed physician in accordance with the Regulations of the Commissioner of Education. It also establishes the requirements for licensure of occupational therapy assistants, which include, but are not limited to, education, experience and examination requirements. This amendment to the Education Law also provides for a grandparenting licensure pathway for individuals to qualify for a license as an occupational therapy assistant, without an examination, if they had a current registration on February 3, 2012 with the Department as an occupational therapy assistant and satisfy the specified education, experience, age, moral character and fee requirements for licensure.

Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) sections 202(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 amendment, 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 Chapter 470 become effective May 18, 2016.

Therefore, emergency action is necessary at the May 2016 Regents meeting for the preservation of the public health and general welfare in order to enable the State Education Department to immediately establish requirements to timely implement Chapter 470 of the Laws of 2015, so that applicants for licensure as occupational therapy assistants, who do not meet the requirements for licensure under the grandparenting licensure pathway, will be able to be licensed as occupational therapy assistants if they meet the licensure requirements of the proposed amendment, which will increase the number of licensed professionals qualified to practice as occupational therapy assistants and help insure continuing competency across the State.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 12-13, 2016 meeting of the Board of Regents, after publication in the State Register and expiration of the 45-day public comment period on proposed rule makings required by the State Administrative Procedure Act.

Subject: Licensure of Occupational Therapy Assistants (OTAs).

Purpose: To define the practice of OTAs, establish requirements for licensure, and alter the composition of the State Board.

Text of emergency/proposed rule: 1. Subdivision (a) section 76.6 of the Regulations of the Commissioner of Education is amended, effective May 18, 2016, as follows:

(a) An occupational therapy assistant shall mean a person *licensed or*

otherwise authorized in accordance with this Part who provides occupational therapy services under the direction and supervision of an occupational therapist or licensed physician and performs client related activities assigned by the supervising occupational therapist or licensed physician. Only a person *licensed or otherwise* authorized under this Part shall participate in the practice of occupational therapy as an occupational therapy assistant, and only a person *licensed or otherwise* authorized under this Part shall use the title occupational therapy assistant.

2. Section 76.7 of the Regulations of the Commissioner of Education is amended, effective May 18, 2016, as follows:

§ 76.7 Requirements for [authorization] *licensure* as an occupational therapy assistant.

To qualify for [authorization] *licensure* as an occupational therapy assistant pursuant to section [7906(7)] *7904-a* of the Education Law, an applicant shall fulfill the following requirements:

(a) . . .

(b) have received an education as follows:

(1) completion of a two-year associate degree program for occupational therapy assistants registered by the department or accredited by a national accreditation agency which is satisfactory to the department; or

(2) completion of a postsecondary program [in occupational therapy satisfactory to the department and] of at least two years duration *that has been determined by the Board of Regents pursuant to Education Law section 6506(5) to substantially meet the requirements of Education Law section 7904-a(b)*;

(c) have a minimum of [three months] *sixteen weeks* clinical experience satisfactory to the State board for occupational therapy and in accordance with standards established by a national accreditation agency which is satisfactory to the department;

(d) . . .

(e) . . .

[(f) register triennially with the department in accordance with the provisions of subdivision (h) of this section, sections 6502 and 7906(8) of the Education Law, and sections 59.7 and 59.8 of this Title;]

([g]*f*) pay a fee for an initial license and a fee for each triennial registration period that shall be one half of the fee for initial license and for each triennial registration period established [in Education law] for occupational therapists; and

([h]*g*) except as otherwise provided by Education Law section 7907(2), pass an examination acceptable to the department.

3. Subdivision (a) of section 76.8 of the Regulations of the Commissioner of Education is amended, effective May 18, 2016, as follows:

(a) A written supervision plan, acceptable to the occupational therapist or licensed physician providing direction and supervision, shall be required for each occupational therapy assistant providing services pursuant to section [7906(7)] *7902-a* of the Education Law. The written supervision plan shall specify the names, professions and other credentials of the persons participating in the supervisory process, the frequency of formal supervisory contacts, the methods (e.g., in-person, by telephone) and types (e.g., review of charts, discussion with occupational therapy assistant) of supervision, the content areas to be addressed, how written treatment notes and reports will be reviewed, including, but not limited to, whether such notes and reports will be initialed or co-signed by the supervisor, and how professional development will be fostered.

4. Subdivision (b) of section 76.9 of the Regulations of the Commissioner of Education is amended, effective May 18, 2016, as follows:

To be permitted to practice as an exempt person pursuant to section 7906(4) of the Education Law, an occupational therapy assistant student shall be enrolled in a program as set forth in section 76.7(b)(1) of this Part and shall practice under the direction and supervision of:

(a) an occupational therapist; or

(b) an occupational therapy assistant who [has obtained authorization] *is licensed or otherwise authorized* pursuant to section [7906(7)] *7904-a* of the Education Law and who is under the supervision of an occupational therapist.

5. Paragraph (3) of subdivision (a) of section 76.10 of the Regulations of the Commissioner of Education is amended, effective May 18, 2016, as follows:

(a) Definitions. As used in this section:

(1) . . .

(2) . . .

(3) Licensee means an individual licensed to practice occupational therapy pursuant to section 7904 of the Education Law or [authorized] *licensed* to practice as an occupational therapy assistant pursuant to section [7906(7)] *7904-a* of the Education Law.

(4) . . .

(5) . . .

(6) . . .

(7) . . .

6. Paragraph (1) of subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education is amended, effective May 18, 2016, as follows:

(j) Fees.

(1) At the beginning of each registration period, a mandatory continuing competency fee of $45 shall be collected from [licensees] *each licensed occupational therapist* engaged in the practice of occupational therapy in New York State and a mandatory continuing competency fee of $25 shall be collected from [licensees] *each person licensed or otherwise* authorized to practice as an occupational therapy assistant in New York State, except for those exempt from the requirement pursuant to subparagraph (b)(2)(i) of this section. This fee shall be in addition to the registration fee required by section 7904 of the Education Law for [licensees] *licensed occupational therapists* [engaged in the practice of occupational therapy], and the registration fee required by section [76.7 of this Part] *7904-a of the Education Law* for [individuals] *persons licensed or otherwise* authorized to practice as [an] occupational therapy assistant*s*.

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 August 14, 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: Office of the Professions, Office of the Deputy Commissioner, State Education Department, State Education Building, 2M, 89 Washington Ave., Albany, NY 12234, (518) 486-1765, email: opdepcom@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:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practices of the professions.

Subparagraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to the practice of the professions.

Section 7902-a of the Education Law, as added by Chapter 470 of the Laws of 2015, provides that only a licensed or otherwise authorized person is permitted to practice as an occupational therapy assistant and use the title "occupational therapy assistant" and defines practice as an occupational therapy assistant to include the providing of occupational therapy and client related services under the direction and supervision of an occupational therapist or a licensed physician.

Section 7903 of the Education Law, as amended by Chapter 470 of the Laws of 2015, provides for a State Board for Occupational Therapy for the purpose of assisting the Board of Regents and the Department on matters of professional licensing and professional conduct, to be composed of not less than six licensed occupational therapists, one occupational therapy assistant, one physician and two members of the public.

Section 7904-a of the Education Law, as added by Chapter 470 of the Laws of 2015, codifies and establishes the education, experience, examination, age, moral character and fee requirements for applicants seeking licensure as occupational therapy assistants.

Subdivision (2) of section 7905 of the Education Law, as amended by Chapter 470 of the Laws of 2015, provides that an individual with a limited permit to practice occupational therapy or as an occupational therapy assistant, shall be authorized to practice only under the direct supervision of a licensed occupational therapist or a licensed physician and shall practice only in a public, voluntary, or proprietary hospital, health care agency or in a preschool or an elementary or secondary school for the purpose of providing occupational therapy as a related service for a handicapped child, and further requires that the supervision of such limited permittee shall be direct supervision as defined by the Regulations of the Commissioner of Education.

Subdivision (4) of section 7906 of the Education Law, as amended by Chapter 470 of the Laws of 2015, permits an occupational therapy assistant student to engage in clinical practice under the direction and supervision of an occupational therapist or an occupational therapy assistant who is under the supervision of an occupational therapist, as part of an accredited occupational therapy assistant program, as defined by the Commissioner and in accordance with the Regulations of the Commission of Education, provided that no title, sign, card or device is used in such manner as to tend to convey the impression that the person rendering such service is a licensed occupational therapist.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes that the Department shall supervise the regulation of the practice of the professions for the benefit of the public. The proposed amendment will conform the Regulations of the Commissioner of Education to Chapter 470 of the Laws of 2015 which amended Article 156 of the Education Law, by, inter alia, codifying and defining the practice of an occupational therapy assistant and providing that only a licensed or otherwise authorized person is permitted to practice as an occupational therapy assistant and use the title occupational therapy assistant. Chapter 470 of the Laws of 2015 also establishes the requirements for licensure as an occupational therapy assistant, which include, but are not limited to, education, experience, and examination and conforms section 76.7 to Chapter 470 of the Laws of 2015. Chapter 470 of the Laws of 2015 provides for supervision requirements for limited permittees.

The proposed amendment to subdivision (a) of section 76.8 of the Regulations of the Commissioner of Education provides for written supervision plans for occupational therapy assistants, who are licensed or otherwise authorized to practice as occupational therapy assistants by providing occupational therapy and client related services under the direction and supervision of an occupational therapist or a licensed physician.

The proposed amendment to section 76.9 of the Regulations of the Commissioner of Education provides that occupational therapy assistant students with limited permits to practice as exempt persons pursuant to section 7906(4) of the Education Law practice under the direction and supervision of an occupational therapist or a licensed occupational therapy assistant who is under the supervision of an occupational therapist.

The proposed amendment to paragraph (3) of subdivision (a) of section 76.10 of the Regulations of the Commissioner of Education amends the definition of licensee to include occupational therapy assistants licensed pursuant to section 7904-a of the Education Law.

The proposed amendment to paragraph (1) of subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education provides that, inter alia, those licensed to practice as occupational therapy assistants shall be subject to a $25 mandatory continuing competency fee at the beginning of each triennial registration period.

Finally, Chapter 470 of the Laws of 2015 also provides for a grandparenting licensure pathway for individuals to qualify for a license as an occupational therapy assistant, without an examination if they had a current registration on February 3, 2012 with the Department as an occupational therapy assistant and satisfy the specified education, experience, age, moral character and fee requirements for licensure.

This legislation further authorized the Department to develop regulations necessary to implement it.

3. NEEDS AND BENEFITS:

The purpose of the rule is to remove the references in the existing Regulations of the Commissioner of Education regarding the "authorization" of individuals to practice as occupational therapy assistants and replace them with the term "licensure" to better protect the public by establishing licensure requirements for occupational therapy assistants, which will help insure continuing competency across the State. The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 470 of the Laws of 2015.

The proposed rule also makes changes to statutory references which are no longer accurate.

4. COSTS:

(a) Costs to State government: The proposed rule implements statutory requirements and establishes standards as directed by statute, and will not impose any additional costs on State government beyond those imposed by the statutory requirements.

(b) Costs to local government: The proposed rule does not impose any additional costs on local government.

(c) Costs to private regulated parties: The proposed rule does not impose any additional costs to regulated parties beyond those imposed by statute. As required by section 7904-a(f) of the Education Law, applicants for licensure as occupational therapy assistants must pay a fee for an initial license and a fee for each triennial registration period that is one-half of the fee for initial license and for each triennial registration period established for occupational therapists. Pursuant to section 7904(8) of the Education Law, applicants for licensure as occupational therapists must pay a fee of $140 to the Department for admission to a Department conducted examination and for an initial license, a fee of $70 for each reexamination, a fee of $115 for an initial license for persons not requiring admission to a Department conducted examination, and a fee of $155 for each triennial registration period. In addition, section 6507-a of the Education Law authorizes the Commissioner to impose a fifteen percent surcharge, rounded upward to the nearest dollar, on any professional registration fee imposed under Title VIII of the Education Law. Thus, pursuant to sections 7904(8), 7904-a(f) and 6507-a of the Education Law, applicants for licensure as occupational therapy assistants will pay a fee of $58 for an initial license and a fee of $89 for each triennial registration period. Applicants for licensure as occupational therapy assistants do not take a Department conducted examination. These fees for applicants for licensure as occupational therapy assistants are the same fees that applicants for authorization to practice as occupational therapy assistants currently pay with under section 76.7(g) of the Regulations of the Commissioner of Education.

The proposed amendment to paragraph (1) of subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education provides that, inter alia, those licensed to practice as occupational therapy assistants shall be subject to a $25 mandatory continuing competency fee at the beginning of each triennial registration period. This is the same mandatory continuing competency fee that authorized occupational therapy assistants are currently required to pay.

Moreover, pursuant to Education Law section 7904-a(b), applicants for licensure as occupational therapy assistants will incur the cost of completion of a two-year associate degree program for occupational therapy assistants registered by the Department or accredited by a national accreditation agency which is satisfactory to the Department, or its substantial equivalent as determined by the Board of Regents. This is comparable to the educational requirement that applicants for authorization to practice as occupational therapy assistants must currently comply with under section 76.7(b) of the Regulations of the Commissioner of Education.

(d) Costs to the regulatory agency: The proposed rule does not impose any additional costs to the Department beyond those imposed by statute. Any associated costs to the Department will be offset by fees charged to applicants and no significant cost will result to the Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule implements the requirements of Chapter 470 of the Laws of 2015, by establishing the standards for individuals to be licensed to practice as occupational therapy assistants to ensure that only those properly educated and prepared to be occupational therapy assistants hold themselves out as such. It does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed rule imposes no new reporting or other paperwork requirements beyond those imposed by the statute.

7. DUPLICATION:

The proposed rule is necessary to implement Chapter 470 of the Laws of 2015. There are no other State or federal requirements on the subject matter of this proposed rule. Therefore, the proposed rule does not duplicate other existing State or federal requirements.

8. ALTERNATIVES:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 470 of the Laws of 2015. There are no significant alternatives to the proposed rule and none were considered.

9. FEDERAL STANDARDS:

Since, there are no applicable federal standards for occupational therapy assistants, the proposed rule does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 470 of the Laws of 2015. The proposed rule will become effective on May 18, 2016, which is the effective date of the statute. The proposed amendment does not impose any compliance schedules on regulated parties or local governments beyond the May 18, 2016 effective date.

Regulatory Flexibility Analysis

On November 20, 2015, Governor Cuomo signed into law Chapter 470 of the Laws of 2015, which, among other changes to the law, added a new section 7902-a to the Education Law to establish occupational therapy assistants as licensed professionals and restrict the use of the title of "occupational therapy assistant" to those individuals licensed as occupational therapy assistants. Chapter 470 of the Laws of 2015 also sets forth the requirements for licensure as an occupational therapy assistant and makes changes to the composition of the State Board for Occupational Therapy.

The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement the provisions of Chapter 470 of the Laws of 2015. The proposed amendment provides that only a licensed or otherwise authorized person is permitted to practice as an occupational therapy assistant and use the title occupational therapy assistant. The proposed amendment further establishes the requirements for licensure as an occupational therapy assistant, which include, but are not limited to, education, experience, and examination requirements and conforms section 76.7 to Chapter 470 of the Laws of 2015. The proposed amendment provides that occupational therapy assistant students with limited permits to practice as exempt persons, pursuant to section 7906(4) of the Education Law, shall practice under the direction and supervision of an occupational therapist or a licensed occupational therapy assistant who is under the supervision of an occupational therapist. The proposed amend-

ment also amends the definition of licensee to include occupational therapy assistants licensed to practice pursuant to section 7904-a of the Education Law. The proposed amendment also provides that, among other things, those licensed to practice as occupational therapy assistants shall be subject to a $25 mandatory continuing competency fee at the beginning of each triennial registration period.

The statutory licensure requirements for applicants for licensure as occupational therapy assistants, which the proposed amendment implements, are comparable to requirements with which individuals seeking authorization to practice as occupational therapy assistants are currently required to comply under section 76.7 of the Regulations of the Commissioner of Education.

The proposed amendment will not impose any new reporting, recordkeeping, or other compliance requirements, or any adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed rule will apply to all individuals seeking licensure as occupational therapy assistants, 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. Of the 3,881 occupational therapy assistants authorized and registered by the State Education Department, 825 occupational therapy assistants report their permanent address of record is in a rural county.

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

As required by Chapter 470 of the Laws of 2015, the proposed rule establishes and codifies the requirements for licensure as an occupational therapy assistant which, include, but are not limited to, education, experience, and examination requirements. The licensure requirements of Chapter 470 of the Laws of 2015 are comparable to those that individuals seeking authorization to practice as occupational therapy assistants are currently required to comply with under section 76.7 of the Regulations of the Commissioner of Education.

Chapter 470 also provides for a grandparenting licensure pathway for individuals to qualify for a license as an occupational therapy assistant, without an examination, if they had a current registration on February 3, 2012 with the Department as an occupational therapy assistant and satisfy the specified education, experience, age, moral character and fee requirements for licensure.

The proposed amendment to subdivision (a) of section 76.6 of the Regulations of the Commissioner of Education codifies and defines the practice of an occupational therapy assistant and provides that only a person licensed or otherwise authorized is permitted to practice as an occupational therapy assistant and use the title occupational therapy assistant.

The proposed amendment to section 76.7 of the Regulations of the Commissioner of Education establishes the requirements for licensure as an occupational therapy assistant, which include, but are not limited to, education, experience, and examination requirements.

The proposed amendment to subdivision (a) of section 76.8 of the Regulations of the Commissioner of Education provides for written supervision plans for occupational therapy assistants, who are licensed or otherwise authorized to practice as occupational therapy assistants by providing occupational therapy and client related services under the direction and supervision of an occupational therapist or a licensed physician.

The proposed amendment to section 76.9 of the Regulations of the Commissioner of Education provides that occupational therapy assistant students with limited permits to practice as exempt persons, pursuant to section 7906(4) of the Education Law, practice under the direction and supervision of an occupational therapist or a licensed occupational therapy assistant who is under the supervision of an occupational therapist.

The proposed amendment to paragraph (3) of subdivision (a) of section 76.10 of the Regulations of the Commissioner of Education amends the definition of licensee to include occupational therapy assistants licensed pursuant to section 7904-a of the Education Law.

The proposed amendment to paragraph (1) of subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education provides that, inter alia, those licensed to practice as occupational therapy assistants shall be subject to a $25 mandatory continuing competency fee at the beginning of each triennial registration period.

With the exception of individuals seeking licensure under the grandparenting licensure pathway, individuals seeking licensure to practice as occupational therapy assistants in New York State will be required to submit an application to the State Education Department and meet all the requirements for licensure, which include, but are not limited to, education, experience, and examination requirements specified in the proposed rule. Individuals seeking to work in New York State after completing all the requirements for licensure except the examination and/or experience requirements will be required to submit a limited permit application to the State Education Department.

The proposed rule will not impose any additional professional service requirements on entities in rural areas.

3. COSTS:

With respect to individuals seeking licensure as occupational therapy assistants from the State Education Department, including those in rural areas, the proposed rule does not impose any additional costs beyond those required by statute. As required by section 7904-a(f) of the Education Law, applicants for licensure as occupational therapy assistants must pay a fee for an initial license and a fee for each triennial registration period that is one-half of the fee for initial license and for each triennial registration period established for occupational therapists. Pursuant to section 7904(8) of the Education Law, applicants for licensure as occupational therapists must pay a fee of $140 to the Department for admission to a Department conducted examination and for an initial license, a fee of $70 for each re-examination, a fee of $115 for an initial license for persons not requiring admission to a Department conducted examination, and a fee of $155 for each triennial registration period. In addition, section 6507-a of the Education Law authorizes the Commissioner to impose a fifteen percent surcharge, rounded upward to the nearest dollar, on any professional registration fee imposed under Title VIII of the Education Law. Thus, pursuant to sections 7904(8), 7904-a(f) and 6507-a of the Education Law, applicants for licensure as occupational therapy assistants will pay a fee of $58 for an initial license and a fee of $89 for each triennial registration period. Applicants for licensure as occupational therapy assistants do not take a Department conducted examination. These fees for applicants for licensure as occupational therapy assistants are the same fees that applicants for authorization to practice as occupational therapy assistants are currently required to pay under section 76.7(g) of the Regulations of the Commissioner of Education.

The proposed amendment to paragraph (1) of subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education provides that, inter alia, those licensed to practice as occupational therapy assistants shall be subject to a $25 mandatory continuing competency fee at the beginning of each triennial registration period. This is the same mandatory continuing competency fee that authorized occupational therapy assistants are currently required to pay.

Moreover, pursuant to Education Law section 7904-a(b), applicants for licensure as occupational therapy assistants will incur the cost of completion of a two-year associate degree program for occupational therapy assistants registered by the Department or accredited by a national accreditation agency which is satisfactory to the Department, or its substantial equivalent as determined by the Board of Regents. This is comparable to the educational requirement that applicants for authorization to practice as occupational therapy assistants must currently comply with under section 76.7(b) of the Regulations of the Commissioner of Education.

Therefore, based on the foregoing, the proposed rule does not impose any new or additional fees on or costs to applicants for licensure as occupational therapy assistants.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement the provisions of Chapter 470 of the Laws of 2015, which, inter alia, codifies and establishes the licensure requirements for occupational therapy assistants. These licensure requirements include, but are not limited to education, experience, and examination requirements. The statutory requirements do not make exceptions for individuals who live or work in rural areas. Thus, the State Education Department has determined that the proposed rule's requirements should apply to all individuals seeking licensure as occupational therapy assistants, regardless of the geographic location to help insure continuing competency across the State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing all parties having an interest in the practice of occupational therapy. These organizations included the State Board for Occupational Therapy and the New York State Occupational Therapy Association, which represents occupational therapists and occupational therapy assistants. These groups have members that live, work or provide occupational therapy education in rural areas. These groups have been provided notice of the proposed rule making and opportunity to comment on the proposed amendment.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is

adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Chapter 470 of the Laws of 2015 and, therefore, the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The State Education Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16 of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed rule is required to implement Chapter 470 of the Laws of 2015, which codifies the definition of occupational therapy assistant, requires at least one occupational therapist assistant to serve on the State Board for Occupational Therapy and establishes the procedure for obtaining an occupational therapy assistant license. The proposed amendment to subdivision (a) of section 76.6 of the Regulations of the Commissioner of Education provides that only a licensed or otherwise authorized person is permitted to practice as an occupational therapy assistant and use the title occupational therapy assistant. The proposed amendment to section 76.7 of the Regulations of the Commissioner of Education establishes the requirements for licensure as an occupational therapy assistant, which include, but are not limited to, education, experience and examination requirements, and conforms section 76.7 to Chapter 470 of the Laws of 2015. The proposed amendment to subdivision (a) of section 76.8 of the Regulations of the Commissioner of Education provides for written supervision plans for occupational therapy assistants, who are licensed or otherwise authorized to practice as occupational therapy assistants by providing occupational therapy and client related services under the direction and supervision of an occupational therapist or a licensed physician. The proposed amendment to section 76.9 of the Regulations of the Commissioner of Education provides that occupational therapy assistant students with limited permits to practice as exempt persons, pursuant to section 7906(4) of the Education Law, shall practice under the direction and supervision of an occupational therapist or a licensed occupational therapy assistant who is under the supervision of an occupational therapist. The proposed amendment to paragraph (3) of subdivision (a) of section 76.10 of the Regulations of the Commissioner of Education amends the definition of licensee to include occupational therapy assistants licensed to practice pursuant to section 7904-a of the Education Law. The proposed amendment to paragraph (1) of subdivision (j) of section 76.10 of the Regulations of the Commissioner of Education provides that, inter alia, those licensed to practice as occupational therapy assistants shall be subject to a $25 mandatory continuing competency fee at the beginning of each triennial registration period.

It is not anticipated that the proposed rule will increase or decrease the number of jobs to be filled because, among other things, the licensure requirements of Chapter 470 of the Laws of 2015 are comparable to the requirements with which individuals seeking authorization to practice as occupational therapist assistants are currently required to comply under section 76.7 of the Regulations of the Commissioner of Education. Chapter 470 also provides for a grandparenting licensure pathway for individuals to qualify for a license as an occupational therapy assistant, without an examination, if they had a current registration on February 3, 2012 with the Department as an occupational therapy assistant, and satisfy the specified education, experience, age, moral character and fee requirements for licensure.

The amendment will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

NOTICE OF ADOPTION

School Receivership

I.D. No. EDU-27-15-00008-A
Filing No. 492
Filing Date: 2016-05-17
Effective Date: 2016-06-01

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

Action taken: Addition of section 100.19 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 211-f(15), 215(not subdivided), 305(1), (2), (20), 308(not subdivided) and 309(not subdivided); and L. 2015, ch. 56, subpart H, part EE

Subject: School receivership.

Purpose: To implement Education Law section 211-f, as added by part EE, subpart H of ch. 56 of the Laws of 2015.

Text or summary was published in the July 8, 2015 issue of the Register, I.D. No. EDU-27-15-00008-EP.

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

Revised rulemaking(s) were previously published in the State Register on October 7, 2015, November 10, 2015, February 24, 2016 and March 16, 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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Annual Professional Performance Reviews of Classroom Teachers and Building Principals

I.D. No. EDU-52-15-00017-A
Filing No. 489
Filing Date: 2016-05-17
Effective Date: 2016-06-01

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

Action taken: Addition of sections 30-2.14 and 30-3.17 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1), (2), 3009(1), 3012-c and 3012-d; L. 2015, ch. 20, subpart C, section 3; L. 2015, ch. 56, part EE, subpart E, sections 1 and 2

Subject: Annual professional performance reviews of classroom teachers and building principals.

Purpose: To establish transition ratings for annual professional performance reviews conducted during a four-year transition period.

Text or summary was published in the December 30, 2015 issue of the Register, I.D. No. EDU-52-15-00017-EP.

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

Revised rulemaking(s) were previously published in the State Register on March 30, 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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

New York State High School Equivalency Diploma

I.D. No. EDU-10-16-00006-A
Filing No. 491
Filing Date: 2016-05-17
Effective Date: 2016-06-01

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

Action taken: Amendment of sections 100.7 and 100.8 of Title 8 NYCRR.

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

Subject: New York State High School Equivalency Diploma.

Purpose: To establish the National External Diploma Program (NEDP) as a pathway to earn a NYS High School Equivalency Diploma.

Text or summary was published in the March 9, 2016 issue of the Register, I.D. No. EDU-10-16-00006-P.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Citizenship Requirements for Professional Licensure and Certification in Teaching and Educational Leadership Service

I.D. No. EDU-10-16-00015-A

Filing No. 490

Filing Date: 2016-05-17

Effective Date: 2016-06-01

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

Action taken: Addition of sections 59.4 and 80-1.3 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), 3001(1), (3), 3003(1), 3009(1), 6504(not subdivided), 6506(1) and (2)

Subject: Citizenship requirements for professional licensure and certification in teaching and educational leadership service.

Purpose: To amend the citizenship requirements for professional licensure and certification in teaching and educational leadership.

Text or summary was published in the March 9, 2016 issue of the Register, I.D. No. EDU-10-16-00015-P.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on March 9, 2016, the State Education Department (SED) received the following comments:

1. COMMENT:

Commenter supports the proposed amendment because a person's education and competence should be the most important criteria for licensing, not citizenship.

DEPARTMENT RESPONSE:

SED agrees that individuals who are not unlawfully present in the United States should be licensed and/or certified if they meet all other licensure and/or certification requirements.

2. COMMENT:

Commenter expressed full support for the proposed regulation. This is the right thing to do for New York and New Yorkers, both economically and morally. I look forward to this rule going into effect.

DEPARTMENT RESPONSE:

SED agrees with this comment.

3. COMMENT:

Dreamers should be allowed to become licensed teachers in our state. If they completed their schooling and have the skills for the job their immigration status should not impede them from becoming employed by the DOE.

DEPARTMENT RESPONSE:

SED agrees that individuals who are not unlawfully present in the United States should be licensed and/or certified if they meet all other licensure and/or certification requirements so they can be employed in this State.

4. COMMENT:

Several commenters support granting licenses to individuals in the Title VIII professions and the certification of teachers and educational leaders to candidates who meet all other requirements except citizenship. These candidates are often bilingual or multilingual and can assist New York State in addressing the current shortage of qualified bilingual teachers, service providers and school leaders. Based on our experience working with immigrant families in New York City public schools, the shortage of bilingual educators often precludes the families of ELLs from exercising their right to a bilingual education under Part 154 of the Commissioner's Regulations. For immigrant families whose children have disabilities, the shortage of bilingual psychologists, speech therapists, social workers, occupational therapists, and physical therapists often results in their children being denied a free appropriate public education. We frequently hear from families whose children require bilingual evaluations that their children experience longer than the legally mandated wait times for evaluations and/or are inappropriately evaluated in English. We also hear from many families whose children require bilingual services, as mandated by their Individualized Education Programs (IEPs), that their children are receiving these services in English, because of the shortage of bilingual service providers.

In addition, bilingual and multilingual individuals embarking on careers in education and the Title VIII professions are likely to have a deep personal understanding of the challenges that immigrant students and ELLs face. They are therefore uniquely qualified to provide culturally responsive services and supports to the growing ELL and immigrant student population across New York State.

Finally, for New York State students who are not citizens, the proposed amendment will open doors to potential postsecondary opportunities, which we believe will help promote their engagement in school and contribute to lower high school drop-out rates.

DEPARTMENT RESPONSE:

SED agrees that individuals who are not unlawfully present in the United States should be licensed and/or certified if they meet all other licensure and/or certification requirements so they can be employed in this State.

5. COMMENT:

Commenter supports the granting of licenses to individuals in the Title VIII professions and the certification of teachers and educational leaders to non-citizens who are not unlawfully present in the U.S. and who meet all other licensure or certification requirements. We strongly believe this amendment will aid in addressing the projected physician shortage gap, increase the diversity of our clinical and research workforce, and most importantly provide an opportunity to a talented group of young immigrants to fulfill their passion and dreams.

DEPARTMENT RESPONSE:

SED agrees with this comment.

6. COMMENT:

The YWCA is dedicated to eliminating racism, empowering women, promoting peace, justice, freedom and dignity for all. We are a dynamic community united in our passion for racial justice and economic empowerment. As a national movement beginning in 1858 we are now the largest and oldest women's organization in the United States. Nationally we have over 2 million participants and 1,300 locations. In New York State we have 21 local associations from New York City to Buffalo. In small towns and major cities we offer women of all ages leadership opportunities, job training, life skills, support groups, shelter for safety and recovery, wellness resources, and programs focused on empowering women and girls.

We support granting licenses to individuals in the Title VIII professions and the certification of nurses, teachers and educational leaders to qualified candidates who meet all other requirements except citizenship. These candidates are New Yorkers who come from diverse backgrounds, are often bilingual or multilingual, and can assist New York State in addressing the current shortage of qualified bilingual teachers, service providers and school leaders.

Finally, for New York State students who are not citizens, the proposed amendment will open doors to potential post-secondary opportunities, which we believe will help promote their engagement in school and contribute to lower high school drop-out rates.

DEPARTMENT RESPONSE:

SED agrees that individuals who are not unlawfully present in the United States should be licensed and/or certified if they meet all other licensure and/or certification requirements so they can receive potential post-secondary opportunities.

7. COMMENT:

I support this amendment because it will give me security and assurance that all my hard work will pay off, and that I will be allowed to give back to my community and the people of New York State by becoming a Primary Care Physician for underserved communities. I deeply care about New York, its community, and other passionate students like me, I respectfully request that you approve the proposed amendment to of sections 59.4 and 80-1.3 of Title 8 NYCRR, allowing dedicated students to get a professional licensing after duly completing their academic requirements. Please keep in mind that this amendment will be helping the people that want to contribute to this State and its residents, people like me who have spent most of their lives in New York, and that consider themselves New Yorkers.

DEPARTMENT RESPONSE:

SED agrees with this comment.

8. COMMENT:

Several commenters and advocacy groups support granting licenses to individuals in the Title VIII professions and the certification of nurses, teachers and educational leaders to qualified candidates who meet all other requirements except citizenship. These candidates are New Yorkers who come from diverse backgrounds, are often bilingual or multilingual, and can assist New York State in addressing the current shortage of qualified bilingual teachers, service providers and school leaders. Finally, for New York State students who are not citizens, the proposed amendment will open doors to potential post-secondary opportunities, which we believe will help promote their engagement in school and contribute to lower high school drop-out rates.

DEPARTMENT RESPONSE:

SED agrees that individuals who are not unlawfully present in the United States should be licensed and/or certified if they meet all other licensure and/or certification requirements so they can be employed in this State.

9. COMMENT:

We strongly support the proposed amendment due to the positive impact it will have on our community, as well as our state. These DREAMers want to pursue their educations and contribute their work and achievements to New York State and the nation. We respectfully ask you to allow us to use our best abilities to contribute to our local, state and national communities by finalizing this amendment and assuring that capable non-citizens can be licensed or certified for the professions they are educated and qualified for.

DEPARTMENT RESPONSE:

SED agrees with this comment.

10. COMMENT:

Commenter strongly supports the proposed amendment to sections 59.4 and 80-1.3 of Title 8 NYCRR. It will strengthen New York's professional resources by affording the State needed qualified licensed professionals. Additionally, having restrictions in the provision of licensure or certification for those who complete their academic requirements in New York is contrary to New York State's policies of educating its non-citizen population regardless of immigration category and counter-productive. The interests of New York are not furthered when students and educational institutions spend considerable time, effort and money to achieve degree qualifications for professions that the Education Department then bars them from pursuing. In fact, the State will be clearly benefited if these individuals were allowed to put their educations to use. This amendment will promote in-state education for students who are New Yorkers, resulting in the provision of more resources to the state's communities.

DEPARTMENT RESPONSE:

SED agrees with this comment.

11. COMMENT:

I support these amendments. Non-citizens who have been educated and meet the other qualifications for professional licenses or certifications should be able to engage in their chosen occupations regardless of their immigration status. By doing so, they will benefit their communities and New York State. In addition, these licensed occupations provide a pathway for economic mobility and community stability for immigrant New Yorkers and provides young people with opportunities and encourages them to stay in school and pursue their educations.

DEPARTMENT RESPONSE:

SED agrees that individuals who are not unlawfully present in the United States should be licensed and/or certified if they meet all other licensure and/or certification requirements so they can be employed in this State.

12. COMMENT:

Commenter supports the proposed amendment for qualified candidates who meet all other licensure requirements except citizenship. Because of their temporary immigration status, commenter's clients are survivors of domestic and gender-based violence and are often prevented from securing the licenses, and hence the employment opportunities, that would create the financial stability they need. Therefore, this amendment removed the citizenship-related barriers for some classes of licenses is critically important to thousands of survivors of domestic violence in New York in that it helps to remove a significant barer to their achievement of safer, more economically stable lives.

DEPARTMENT RESPONSE:

SED agrees that individuals who are not unlawfully present in the United States should be licensed and/or certified if they meet all other licensure and/or certification requirements so they receive other post-secondary opportunities in this State.

13. COMMENT:

Commenter supports the proposed regulation. Many students that I teach are undocumented with an uncertain future of employment. These amendments would be a great benefit to students and young people in allowing them to apply their knowledge and skills in the workplace, contribute to their communities as well as gain a living wage. I urge you and your colleagues to pass approve of these amendments to grant thousands of very qualified and talented young people the opportunity to contribute to their communities. I believe this is a very important step towards ensuring a more equitable society where all youth have the opportunity to achieve their dreams and live to their fullest.

DEPARTMENT RESPONSE:

SED agrees with this comment.

14. COMMENT:

Several commenters expressed strong support for this proposal. Commenters commend the Board of Regents for making this important step which will allow more young people in New York to be able to get licensed in professions they have worked hard to prepare for and to allow them to continue to work hard and support themselves and their families. Commenters believe this proposal must be passed.

DEPARTMENT RESPONSE:

SED agrees with this comment.

15. COMMENT:

I support these amendments. Non-citizens who have been educated and meet the other qualifications for professional licenses or certifications should be able to engage in their chosen occupations regardless of their immigration status. By doing so, they will benefit their communities and New York State.

DEPARTMENT RESPONSE:

SED agrees that individuals who are not unlawfully present in the United States should be licensed and/or certified if they meet all other licensure and/or certification requirements so they can be employed in this State.

16. COMMENT:

I enthusiastically support these amendments to New York State's policy on those who are eligible to receive professional licenses in these important fields. Those who would be affected by this policy have already proven themselves to be outstanding community members and dedicated professionals. Their position as having been previously excluded from benefits and opportunity makes them more compassionate professionals who will be able to help others in need. Many of those affected have lived in the US their whole lives, know no other way of life, and would be effectively barred from moving forward in their careers if not given the opportunity in the US; some have nowhere else to go. From the standpoint of the US economy, joining the workforce is more productive for society as well as the individual and they will surely contribute to the growth and sustenance of the economy.

DEPARTMENT RESPONSE:

SED agrees with this comment.

17. COMMENT:

Commenter supports the proposed amendments. Licensing of occupations should serve to ensure standards, not to exclude workers from a field. The state has a vested economic and fiscal interest in ensuring that the skills and talents of all of its residents are put to their best use. In many cases, the state has already invested in the education and training of people who it then illogically excludes from the occupation for which they have been trained. If we have in the state a group of people who are being held back from doing jobs that they are well qualified to do, in which they would earn more and contribute more to the economy, that represents a potential economic capacity that is being left on the table. Clearly, other lawfully present immigrants are capable of filling these jobs. It represents a tangible loss to New York State to prevent an otherwise-qualified person from gaining a license.

DEPARTMENT RESPONSE:

SED agrees with this comment.

18. COMMENT:

I am in support of the new amendment to allow licenses to be granted widely to anyone seeking them, despite labels of DACA or TPS. If someone has expertise and qualified training in an area governed by the Board of Regents and their only impediment to work in that field is their im-

migration status, they should still be given licensure. We need all the experts we can find, particularly in urban public education where the demography of our student body is far more diverse than the demography of our teachers and extremely so in the case of administrators.

DEPARTMENT RESPONSE:

SED agrees with this comment.

19. COMMENT:

We support the proposed amendments, as they will increase the number and diversity of people engaged in vital professions such as education and health care in New York City and New York State; increase economic opportunity for New York immigrants who are otherwise eligible and qualified to work in the relevant professions; and, support economic vitality in New York City and New York State.

DEPARTMENT RESPONSE:

SED agrees with this comment.

20. COMMENT:

Several commenters stated that they believe that this regulation will benefit this state's economy, professional communities, immigrant communities, and the CUNY and SUNY school systems.

Both the CUNY and SUNY school systems provide excellent education and programs for those seeking their professional license or certificate in a wide range of career fields. These programs are open to non-citizen students. Moreover, any student who can show that he/she attended high school in New York for two or more years is considered a resident of New York and is thus eligible for in state tuition regardless of immigration status. This regulation will first give promise to CUNY and SUNY applicants that upon finishing the programmatic requirements, they will be able to receive their professional licenses or certificates. This could increase enrollment, given that non-citizen students may now be reluctant to even apply. Furthermore, this regulation will ensure that all CUNY and SUNY students who have obtained their professional licenses or certificates are able to then receive such licenses/certificates to work in the professional field and be financially stable. Indeed, CUNY and SUNY – which expends many resources to provide students with in state tuition – will in turn have professional graduates who can contribute to the state with their skills and work and taxes and who will also be able to pay their educational loans.

This regulation is in line with federal and state law, and will benefit the economic stability of immigrant communities and New York as a whole. This regulation, as interpreted by the Office of the Professions, should ensure that all persons who have completed their professional education for the licenses/certificates at issue could engage in the practice of their professional career, provide services to others, and be financially stable.

We support the amendment because providing professional licensing without immigration restrictions promotes financial stability and economic growth within immigrant communities and New York as a whole. This amendment will benefit the schools that educate, the students who seek and obtain this education, and the communities where the professionals are engaging in their fields of practice.

However, we believe the Board and the Department would best serve New York by focusing on competency requirements, not immigration category. The federal government and federal immigration services have law and regulations regarding the employment of non-citizens. The Board of Regents, the Department of Education, and Office of the Professions should leave immigration category distinctions to the expertise of federal immigration authorities and remove any immigration related distinctions from licensing requirements. Their focus is best on the educational and training qualifications of professionals, which are within the expertise of the Office of the Professions, the Department of Education, and the Board of Regents.

DEPARTMENT RESPONSE:

SED agrees that the proposed amendment will benefit the state's economy, professional communities, immigrant communities and the CUNY and SUNY school systems. SED also believes that the regulation is consistent with federal and state law. With respect to the commenter's concerns over the immigration statuses set forth in the proposed amendment, the Department believes the terms of the proposed amendment is consistent with federal law and applicable case law on this issue. Federal law, 8 U.S.C. § 1621[a], [d], prohibits States from issuing any State or local public benefit including professional licenses to any individual that is not a qualified alien [as defined in 8 U.S.C. § 1641][,a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. § 1101 et seq.], or an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. § 1182(d)(5)] for less than one year. However, since 1996 this federal prohibition does not apply if the State enacts a State law expressly authorizing the licensing of such undocumented aliens.

Currently, individuals granted deferred action childhood arrivals (DACA) relief under Federal Executive Order and are allowed to continue to be lawfully present in the United States without fear of deportation are not eligible for State licensure in the professions or those seeking their professional teaching certification under the Regulations of the Commissioner. However, New York enables hundreds of thousands of undocumented students, including DACA students, to receive education through the state's public school system and graduate with New York high school diplomas. Yet their futures historically have been circumscribed by current federal law restricting the issuance of professional licenses based on immigration status and State laws and/or regulations that imposed citizenship requirements for professional licensing in certain professions and for certification as a teacher or school leader. These young people generally derive their immigration status from their parents. If their parents are undocumented, most of these individuals have no mechanism to obtain legal residency, even if they have lived most of their lives in the United States.

However, the case law on the citizenship requirements for State licensure has been evolving over the past decade and recent case law dictates that it is time for a change.

State law and the Dandamudi Case

Prior to 2012, New York State law prohibited individuals from receiving licenses in 13 of the Title VIII professions (including medicine, pharmacists, engineers, etc.) unless the individual was a U.S. citizen or permanent lawful resident. These statutes were struck down by the U.S. Second Circuit Court of Appeals as unconstitutional in Dandamudi v Tisch, 686 F.3d 55 (2012) and in violation of the Equal Protection Clause of the U.S. Constitution.

Following this decision, the Department revised its application forms for all licensed professions under Title VIII of the Education Law to require any applicant, including temporary immigrant aliens, to become licensed provided they fall within one of the immigration statuses set forth in 8 USC § 1621. This was done to comply with that federal law.

Recent case law described below appears to authorize the Board of Regents to fulfill the requirement for an exception to the federal prohibition against professional licensure of undocumented aliens under 8 U.S.C. § 1621 [d] based on State law enacted after August 22, 1996 by using their broad authority to adopt regulations governing licensure in the Title VIII professions (Education Law §§ 6501 and 6506) and the certification of teachers and school leaders (Education Law §§ 3001 and 3003) to expressly authorize the licensure of undocumented aliens in regulation, as opposed to State statute.

Vargas Decision (2015 WL 3479561)

In June 2015, the Appellate Division, Second Department issued a decision on whether the federal law (8 U.S.C. § 1621[a], [d]) prohibits an alien in DACA status from receiving bar admission. The U.S. Department of Justice submitted an amicus brief opposing the applicant's admission to the bar based on the federal law. The NY Attorney General submitted a brief arguing that the license should be issued despite the federal law. The Second Department stated that "a narrow reading of 8 USC § 1621(d), so as to require a state legislative enactment to be the sole mechanism by which the State of New York exercises its authority granted in 8 USC § 1621(d) to opt out of the restrictions on the issuance of licenses imposed by 8 USC § 1621(a), unconstitutionally infringes on the sovereign authority of the state under the Supremacy Clause (10th Amendment) to divide power among its three coequal branches of government.

Further, the court held, in light of this State's allocation of authority to the Judiciary to regulate the granting of professional licenses to practice law (see Judiciary Law § 53[1]), that the Judiciary may exercise its authority as the state sovereign under the Supremacy clause to opt out of the restrictions imposed by section 1621(a) to the limited extent that those restrictions apply to the admission of attorneys to the practice of law in the State of New York. As a result, the Court ordered that Vargas receive his law license, provided he met certain other licensure requirements.

While the Vargas decision is based on an intrusion on the role of the judiciary over bar admissions in violation of the Supremacy Clause, we believe that the Court's reasoning applies equally to the adoption of regulations having the force and effect of law by an administrative agency that is part of the executive branch of New York government, another one of the three coequal branches of government under the New York Constitution. In concluding that requiring the State Legislature to have enacted a State law after August 22, 1996 authorizing professional licensure in order to qualify for the exception under 8 USC § 1621(d) would be unconstitutional, the Second Department ruled that:

"[W]e hold that the processes by which a state chooses to exercise, by one of its coequal branches of government, the authority granted by the federal legislation is not a legitimate concern of the federal government."

The Board of Regents, as the head of the State Education Department, has been granted broad authority under Education Law §§ 207 and 6506 to supervise the admission to the professions under Title VIII of the Education Law, including the authority to adopt rules related thereto. The Commissioner of Education and the Department have similarly been granted broad authority under Education Law § 6507 to administer the admission of the professions, and to adopt regulations related thereto subject to ap-

proval by the Board of Regents pursuant to § 207. In the case of teaching, Education Law § 3001(3), which itself has been amended subsequent to 1996, explicitly authorizes the Commissioner to adopt regulations exempting alien teachers from the citizenship requirement and permitting their employment. Collectively, these statutes provide the Board of Regents and the Commissioner with the requisite authority to adopt regulations on this subject.

In addition, the New York Court of Appeals in the Matter of Aliessa v. Novello, (96 NY2d 418), a case involving Medicaid benefits for legal aliens, relying upon the Supreme Court decision in Graham v. Richardson, ruled that the federal law impermissibly authorizes states to disqualify otherwise eligible aliens from Medicaid—indicating that Congress cannot authorize a violation of equal protection.

Based on the rationale in the above-referenced cases, the Board of Regents used its broad authority over the granting of licenses in the Title VIII professions and the certification of teachers to promulgate regulations expressly authorizing otherwise qualified aliens who are not unlawfully present in the U.S. and who meet all other licensure requirements except citizenship to become licensed or certified.

21. COMMENT:

Commenter expressed support for the proposed amendment to the regulations of Commissioner of Education. I urge you to please continue with the amendment and also to make clear what "not unlawful status" means because not everyone has DACA, but we all deserve a chance to better our communities and ourselves.

DEPARTMENT RESPONSE:

SED agrees with this comment.

22. COMMENT:

I support the proposed amendments, because they are valid under the U.S. Constitution, particularly under the 10th amendment, 14th amendment, and Supremacy Clause. The proposed amendments are also consistent with New York State's public policy interests.

I would also like to express my support for the Board of Regents to go even further – in this rulemaking or in a subsequent rulemaking – and extend eligibility for professional licenses without any regard to immigration status, following the example of the state of California. In California, the state legislature passed a statute extending eligibility to all California residents without regard to immigration status, and the judiciary has upheld this statute.

DEPARTMENT RESPONSE:

SED agrees that the proposed amendment is valid under the U.S. Constitution and that the proposed amendment is consistent with New York's public policy interests.

As for the commenter's request to extend eligibility for professional licenses without regard to immigration status, the Department believes the proposed amendment strikes a balance between the prohibitions in federal law and the applicable case law at this time.

23. COMMENT:

Commenter supports the proposed amendments but, to ensure that the regulations achieve this goal and accord with the U.S. and New York Constitutions' guarantees of equal protection under law, we urge NYSED to make clear that all noncitizens permanently residing under color of law in the United States ("PRUCOLs") will be eligible to obtain licenses. We urge this clarification for two reasons: (1) to reduce the administrative burden of implementing the regulations; and (2) to ensure that they comport with equal protection law.

PRUCOL New Yorkers frequently have built their lives in New York and are here to stay. Pursuant to Aliessa v. Novello, (96 N.Y.2d 418 (2001)) and the constitutional guarantee of equal protection, the new regulations should make clear that New York will afford them an opportunity to pursue their aspirations on an equal basis with other applicants for professional licenses. In accordance with these principles, we urge consideration of the following clarifying language to the proposed new section 59.4 (and equivalent modifications to the proposed new section 80-1.3(a)):

Notwithstanding any other provision of this Title to the contrary, no otherwise qualified applicant shall be denied a license, certificate, limited permit or registration pursuant to this Title by reason of his or her citizenship or immigration status, unless such applicant is otherwise ineligible for a professional license under 8 USC § 1621 or any other applicable federal law. Provided, however that pursuant to 8 USC § 1621(d), no otherwise qualified applicant alien shall be precluded from obtaining a professional license under this Title if an individual is permanently residing under color of law ~~not unlawfully present~~ in the United States, including but not limited to individuals granted Deferred Action for Childhood Arrivals relief or similar relief from deportation.

DEPARTMENT RESPONSE:

The current language in the proposed amendment includes all aliens permanently residing under color of law and covered by Aliessa v. Novello, 96 N.Y.2d 418, 422 n.2 (2001), because such individuals are lawfully present in the United States and the language specifically indicates that the beneficiaries of the regulation include but are not limited to those who receive DACA and similar relief from deportation.

The language intentionally includes the phrase "not unlawfully present", rather than relying solely on the phrase "permanently residing in the United States under color of law." Permanently residing the in the United States under color of law could be read to exclude from licensing several important categories, including nonimmigrants (whose status is temporary, and who are therefore not considered to be "permanently residing under color of law"), and aliens in Temporary Protected Status, see 8 USC 1254a(f)(1) (aliens in temporary protected status " shall not be considered to be permanently residing in the United States under color of law"). Therefore, the Department does not believe any revisions to the current language are needed.

24. COMMENT:

Several commenters are not in support of the proposed regulation to allow undocumented aliens to apply for teaching licenses in light of the fact that a U.S. Citizen coming from another state or a military transferee are not afforded the same privilege. The Board of Regents needs to be more focused on supporting our military personnel and their families rather than passing constitutionally questionable immigration policies. Commenters urged the Board of Regents to take the necessary actions to implement the common sense policies laid forth in S.2947 rather than investing time and taxpayer dollars exploring a proposal which is not only out of touch with New York's values, but places laws breakers in front of military service members and their families.

DEPARTMENT RESPONSE:

The Department believes the proposed amendment is consistent with federal law and applicable case law relating to immigration and professional licensing. The Department is also currently working with the Legislature on proposed legislation to expedite the professional licensure process for military spouses.

25. COMMENT:

Commenter expressed that she was not in support of the proposed regulation as it encourages aliens to come to the United States and live off of the taxpayers. Where is the deterrent to anyone from anywhere just coming here with no documentation, even if they are the sons or daughters born in the US of illegal parents?

DEPARTMENT RESPONSE:

The Department believes the proposed amendment is consistent with federal law and applicable case law relating to immigration and professional licensing. Moreover, the individuals covered under the proposed amendment are already lawfully present in the United States under current immigration law.

26. COMMENT:

Several commenters expressed that, by passing this regulation, New York State is sending a terribly mixed message to the public. Allowing illegal immigrants to teach our children is a direct contradiction of the lessons of right versus wrong. This is especially the case when New York State continues to reject licensed individuals, including certain military trained personnel, from being able to obtain proper employment in the Empire State.

DEPARTMENT RESPONSE:

The Department believes the proposed amendment is consistent with federal law and applicable case law relating to immigration and professional licensing. Moreover, the individuals covered under the proposed amendment are lawfully present in the United States under current immigration law.

27. COMMENT:

Commenter expressed that teaching licenses should not be granted to undocumented workers.

DEPARTMENT RESPONSE:

The Department believes the proposed amendment is consistent with federal law and applicable case law relating to immigration and professional licensing, including the certification of teachers. Moreover, the individuals covered under the proposed amendment are already lawfully present in the United States under current immigration law and teachers and subject to a background check prior to certification and/or employment in a school in this State.

28. COMMENT:

Several commenters are opposed to allowing undocumented workers to apply for teaching licenses. Many American citizens with teaching licenses are unable to find work and undocumented workers should become legal prior to being permitted to apply for a teaching license.

DEPARTMENT RESPONSE:

The Department believes the proposed amendment is consistent with federal law and applicable case law relating to immigration and professional licensing, including the certification of teachers. Moreover, the individuals covered under the proposed amendment are already lawfully present in the United States under current immigration law.

29. COMMENT:
Several commenters expressed opposition to allowing undocumented aliens to apply for teaching licenses as they are criminals who have violated immigration laws and should not be rewarded for doing so.
DEPARTMENT RESPONSE:
The Department believes the proposed amendment is consistent with federal law and applicable case law relating to immigration and professional licensing, including the certification of teachers. Moreover, the individuals covered under the proposed amendment are already lawfully present in the United States under current immigration law. Moreover, all teachers are required to have a criminal history record check prior to certification and as a condition of employment in the schools of this State.
30. COMMENT:
Commenter expressed concern regarding the ability to run a background check on an undocumented alien and the consequences of the same.
DEPARTMENT RESPONSE:
The Department believes the proposed amendment is consistent with federal law and applicable case law relating to immigration and professional licensing, including the certification of teachers because the individuals covered under the proposed amendment are lawfully present in the United States under current immigration law.
Moreover, all teachers are required to have a criminal history record check prior to certification and as a condition of employment in the schools of this State.
31. COMMENT:
Commenter stated that it is not a question of fairness but a question of legality. If you don't like the Federal Immigration Laws work to have them changed at the Federal level, not side step them on the state level. What kind of example does it set for the children to have someone who's breaking a law teaching them? If the state is bent on fairness how about allowing returning veterans and/or their spouses from out of state (all citizens), be licensed in a more expeditious manner?
DEPARTMENT RESPONSE:
The Department believes that the proposed amendment is consistent with federal law and applicable case law relating to immigration and professional licensing, including the certification of teachers. Moreover, the individuals covered under the proposed amendment are already lawfully present in the United States under current immigration law.
The Department is also working with the Legislature on proposed legislation to expedite the licensing of military spouses.
32. COMMENT:
Commenter is a retired assistance principal and expressed that we already certify substandard educators and until there is a national database of teachers who lost their licenses in other states, I feel our children deserve the highest caliber personnel to educate them. If military spouses have licenses in states we have reciprocity with, they should be given provisional certification. Not all states are as stringent as we are and we should not lower our standards. Our children deserve the best.
DEPARTMENT RESPONSE:
The Department believes the proposed amendment is consistent with federal law and applicable case law relating to immigration and professional licensing. The Department is also currently working with the Legislature on proposed legislation to expedite the licensure process for military spouses.
33. COMMENT:
Commenter expressed dismay and disgust for the proposed regulation to let undocumented workers apply for teaching licenses. These people are in the United States ILLEGALLY. They are in this country because the law has been broken. You think it is fair to the legal residents of this state to reward people that have broken the law by letting them teach our children? If they want to come here, they need to follow the legal process for doing so. What kind of a lesson is this to our youth … that breaking the law is acceptable? Why should my hard-earned tax dollars be spent putting people illegally in the United States on the state payroll? You honestly think this is fair to me?
Why should people who are in the United States ILLEGALLY be afforded the same rights and privileges as those in this country legally? THEY BROKE THE LAW! What part of that do people not understand? We now live in a society so politically correct that breaking the law is acceptable because people fall into certain demographics?
The citizens of New York need to FIRE everyone at the State Education Department and start over by hiring people that respect our immigration laws.
DEPARTMENT RESPONSE:
The Department believes the proposed amendment is consistent with federal law and applicable case law relating to immigration and professional licensing. Moreover, the individuals covered under the proposed amendment are already lawfully present in the United States under current immigration law.

NOTICE OF ADOPTION

Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer Tuberculosis Tests

I.D. No. EDU-10-16-00017-A
Filing No. 496
Filing Date: 2016-05-17
Effective Date: 2016-06-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of section 64.7 of Title 8 NYCRR.
Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6527(6)(c), 6902(1) and 6909(4)(c); L. 2015, ch. 464
Subject: Execution by registered professional nurses of non-patient specific orders to administer tuberculosis tests.
Purpose: Authorize administration of other tests to detect/screen for tuberculosis in addition to purified protein derivative (PPD) tests.
Text or summary was published in the March 9, 2016 issue of the Register, I.D. No. EDU-10-16-00017-EP.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov
Initial Review of Rule
As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.
An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.
Assessment of Public Comment
The agency received no public comment.

New York State Gaming Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Simplifying How a Trainer May Alter the Use of Hopples

I.D. No. SGC-22-16-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:
Proposed Action: Amendment of sections 4113.5 and 4117.3 of Title 9 NYCRR.
Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 301(1)
Subject: Simplifying how a trainer may alter the use of hopples.
Purpose: To preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.
Text of proposed rule: Section 4113.5 of 9 NYCRR would be amended as follows:
§ 4113.5. Unqualified horses.
(a) A horse shall be deemed unqualified and must qualify once before being allowed to start in any overnight pari-mutuel event for the following reasons:
* * *
(2) The horse is changing gait[, or putting on or taking off hopples unless available performance lines show that the horse has raced satisfactorily in such manner previously and in the opinion of the judges can be expected to give a satisfactory performance].
* * *
Section 4117.3 of 9 NYCRR would be amended as follows:

§ 4117.3. Use or removal of hopples.

(a) [If a horse has warmed up in hopples or raced one heat of a race in hopples, such hopples shall not be removed from a horse or altered without permission of the presiding judge.] *The trainer has discretion on the use of hopples, subject to the judges cancelling any change in the use of hopples on a horse in the exercise of the judges' discretion to protect the integrity of racing and the wagering public.*

(b) [A horse habitually wearing hopples shall not be permitted to start in a race without them except by permission of the presiding judge. A horse habitually racing free-legged shall not be permitted to wear hopples in a race except with such permission. A failure to obtain permission to add, remove or make alterations in hopples may be deemed to be a fraud in racing.] *The entry of the horse shall state whether such horse will use hopples or not. Failure to include a change on the entry form disallows any addition or subtraction of hopples for the race. Every change in a horse's use of hopples must be included in the program.*

(c) Any person found culpable of removing or altering a horse's hopples during a race or between races for the purpose of fraud shall be suspended or expelled.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1, 19), and 301(1). Under Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Under Section 301(1), the Commission is authorized to supervise generally all harness race meetings and to adopt rules to prevent the circumvention or evasion of its regulatory purposes and provisions.

2. Legislative objectives: To preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: This rule making would allow the trainer discretion when entering a harness horse to race to change whether the horse will use hopples, subject to oversight by the Commission judges at the track.

Hopples are straps that help to keep a harness horse on a proper gait, either pacing or trotting, by connecting the front and rear legs on the same side of the horse. The consensus in the industry is that harness horses are able to race well regardless of a change in such equipment and that the wagering public can properly handicap such changes.

Under the current rules, a trainer must get the permission of the presiding judge for any change in the use of hopples (9 NYCRR § 4117.3) and a horse must race satisfactorily in a qualifying race before hopples may be worn or removed for the first time (9 NYCRR § 4113.5).

The proposal would amend these rules to allow the trainer to change whether a horse will use hopples or not, and to change a horse's use of hopples without having to qualify the horse. The proposal instead would require that the race program report any changes in a horse's use of hopples and authorize the judges to disallow any change in the use of hopples when necessary to protect the integrity of racing and the wagering public. This will allow a trainer more flexibility to change hopples as appropriate for local track configurations and conditions without always incurring the time and expense of getting permission from the presiding judge and requalifying the horse to race.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: N/A.

5. Local government mandates: None. The Commission is the only governmental entity authorized to regulate pari-mutuel thoroughbred racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: No relevant rules or other legal requirements of the state and/or federal government exist that duplicate, overlap or conflict with this rule.

8. Alternatives: The Commission considered not changing this rule, but decided to propose changes that are less burdensome and are consistent with the capabilities of harness horses and the wagering public.

9. Federal standards: There are no minimum standards of the Federal government for this or a similar subject area.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

The proposal seeks to revise the Commission's horse racing rules in regard to the use or removal of hopples for standardbred horses. The proposal would no longer require a harness horse trainer to obtain permission and have the horse participate in a qualifying race before making this minor equipment change. The trainer would be able to indicate the change on the entry form. The change would appear in the race program, and the judges could prevent such a change in the use of hopples when necessary to protect race integrity and wagering public.

This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Decoupling of Harness Horses in Major Stakes Races

I.D. No. SGC-22-16-00005-P

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

Proposed Action: Amendment of section 4111.15 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 301(1)

Subject: Decoupling of harness horses in major stakes races.

Purpose: To preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

Text of proposed rule: Section 4111.15 of 9 NYCRR would be amended as follows:

§ 4111.15. Coupling of entries.

(a) In all races starters shall be coupled when owned in whole or in part or under the control of, or trained by the same person, or trained in the same stable or by the same management, or where, in the discretion of the judges, it is necessary to protect the public interest. A horse to be driven by a full-time employee of another driver in the race shall be considered as racing from the same stable. If a race is divided into two or more divisions, such starters shall be seeded into separate divisions where possible, first on the basis of ownership[, next on the basis of training,] and [finally] by stable, [but the] *then on the basis of training. The* divisions in which they compete and their post positions shall be drawn by lot. Whenever such horses are coupled in the same race*,* the presiding judge shall approve the second and additional drivers.

(1) Except for stakes races with a purse of $25,000 or more, horses trained by the same trainer but owned by different, separate owners may be uncoupled. The presiding judge has the discretion to couple such horses, however, to protect the interests of the wagering public. Trainers with an ownership interest in more than one horse must have their horses coupled.

(2) Except for stakes races with a purse of $100,000 or more, horses with common ownership may be uncoupled. The presiding judge has the discretion to couple such horses, however, to protect the interests of the wagering public.

(b) Except by express permission of the commission, coupled entries are prohibited in overnight events.

(c) After post positions have been drawn, horses may be coupled as an entry (or uncoupled, if erroneously coupled) but such race, as divided[,] and as post positions have been drawn*,* shall be final.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1, 19), and 301(1). Under Section 103(2), the Commission is responsible for supervising, regulating and administering all horse racing and pari-mutuel wagering activities in the State. Subdivision (1) of Section 104 confers upon the Commission general jurisdiction over all such gaming activities within the State and over the corporations, associations and persons engaged in such activities. Subdivision (19) of Section 104 authorizes the Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Under Section 301(1), the Commission is authorized to supervise generally all harness race meetings and to adopt rules to prevent the circumvention or evasion of its regulatory purposes and provisions.

2. Legislative objectives: To preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: This rule making is needed to increase the wagering opportunities and improve field size in major stakes races in New York by permitting horses with a common trainer or owner to participate in major stakes races without being coupled for betting purposes.

The current rule, 9 NYCRR § 4111.15, provides that horses with a common trainer or owner shall be coupled as a single betting interest in a race. When horses are coupled, it reduces the number of options that are available for a bettor to select in a race. As a result, there is less betting interest and handle on the race, which in turn reduces the amount of take-out for funding the racetrack operations and the support of government. In addition, when horses would be coupled, the trainer and owner are less interested in entering the horses to race. As a result, there are fewer horses in the race, less betting interest and handle, and a reduction in revenue for the track, purses and government.

The proposal would permit not coupling such horses in major stakes races. In a stakes race with a purse or $25,000 or more, horses with different owners but a common trainer will not be coupled. In a stakes race with a purse of $100,000 or more, horses with the same owner will not be coupled. The larger purse amount for horses with a common owner is because the risk of collusion during a race is higher when both horses are owned by the same owner, rather than the horses owned by owners who, despite hiring the same trainer, are competing against each other. At a certain purse amount, which the Commission estimates as $100,000 in such stakes races, the value of winning the purse, and potentially advancing to another stage of the stakes racing program, outweighs the risk of collusion. In addition, bettors have access to information that identifies common trainers or owners of each horse. Finally, the proposal retains the provision that the judges may require any horses to be coupled when it is necessary to protect the public interest.

The proposal also clarifies subdivision (a) of section 4111.15 by having horse ownership and a horse's stable be equivalent.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will not add any new costs. There will be no costs to local government because the Commission is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: N/A.

5. Local government mandates: None. The Commission is the only governmental entity authorized to regulate pari-mutuel thoroughbred racing activities.

6. Paperwork: There will be no additional paperwork.

7. Duplication: No relevant rules or other legal requirements of the state and/or federal government exist that duplicate, overlap or conflict with this rule.

8. Alternatives: The Commission considered not changing this rule, but decided to propose changes that are congruent with the approach of other racing jurisdictions and recent amendments to thoroughbred rules.

9. Federal standards: There are no minimum standards of the Federal government for this or a similar subject area.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

This proposal only authorizes the standardbred racetrack operators in New York not to couple the entries of horses with common ownership or trainers as a single betting interest in major pari-mutuel stakes races. The proposal will increase the wagering opportunities for those who are interested in wagering on the race. No regulated party will need a period to cure a pending matter because there is no penalty enhancement.

Such regulation will serve the best interests of standardbred racing by increasing the wagering opportunities that racetrack operators may offer to the wagering public. This rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Department of Health

EMERGENCY RULE MAKING

Protection Against Legionella

I.D. No. HLT-22-16-00001-E
Filing No. 481
Filing Date: 2016-05-11
Effective Date: 2016-05-11

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)

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

Specific reasons underlying the finding of necessity: Improper maintenance of cooling towers can contribute to the growth and dissemination of Legionella bacteria, the causative agent of legionellosis. Legionellosis causes cough, shortness of breath, high fever, muscle aches, headaches and can result in pneumonia. Hospitalization is often required, and between 5-30% 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 2005-2014 increased 323% when compared to those reported in the previous ten year period.

Outbreaks of legionellosis have been associated with cooling towers. A cooling tower is an evaporative device that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system. Because water is part of the process of removing heat from a building, these devices require biocides—chemicals that kill or inhibit bacteria (including Legionella)—as means of controlling bacterial overgrowth. Overgrowth may result in the normal mists ejected from the tower having droplets containing Legionella.

For example, in 2005, a cooling tower located at ground level adjacent to a hospital in New Rochelle, Westchester County resulted in a cluster of 19 cases of legionellosis and multiple fatalities. Most of the individuals were dialysis patients or companions escorting the patients to their dialysis session. One fatality was in the local neighborhood. The cooling tower was found to have insufficient chemical treatment. The entire tower was ultimately replaced by the manufacturer in order to maintain cooling for the hospital and to protect public health. In June and July of 2008, 12 cases of legionellosis including one fatality were attributed to a small evaporative condenser on Onondaga Hill in Syracuse, Onondaga County. An investigation found that the unit was not operating properly and this resulted in the growth of microorganisms in the unit. Emergency biocide treatment was initiated and proper treatment was maintained. No new cases were then detected thereafter.

Recent work has shown that sporadic cases of community legionellosis are often associated with extended periods of wet weather with overcast skies. A study conducted by the New York State Department of Health that included data from 13 states and one United States municipality noted a dramatic increase in sporadic, community acquired legionellosis cases in May through August 2013. Large municipal sites such as Buffalo, Erie County reported 2- to 3-fold increases in cases without identifying com-

mon exposures normally associated with legionellosis. All sites in the study except one had a significant correlation, with some time lag, between legionellosis case onset and one or more weather parameters. It was concluded that large municipalities produce significant mist (droplet) output from hundreds of cooling towers during the summer months. Periods of sustained precipitation, high humidity, cloud cover, and high dew point may lead to an "urban cooling tower" effect. The "urban cooling tower" effect is when a metropolitan area with hundreds of cooling towers acts as one large cooling tower producing a large output of drift, which is entrapped by humid air and overcast skies.

More recently, 133 cases of legionellosis, which included 16 fatalities, occurred in Bronx, NY (July-September, 2015). This event was preceded by an outbreak in Co-Op City in the Bronx, from December 2014 to January 2015, which involved 8 persons and no fatalities. Both of these outbreaks have been attributed to cooling towers, and emergency disinfection of compromised towers helped curtail these outbreaks. These events highlight the need for proper maintenance of cooling towers.

The heating, ventilation, and air-conditioning (HVAC) industry has issued guidelines on how to seasonally start a cooling tower; treat it with biocides and other chemicals needed to protect the components from scale and corrosion; and set cycles of operations that determine when fresh water is needed; and how to shut down the tower at the end of the cooling season. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has recently released a new Standard entitled Legionellosis: Risk Management for Building Water Systems (ANSI/ASHRAE Standard 188-2015). Section 7.2 of that document outlines components of the operations and management plan for cooling towers. The industry also relies on other guidance for specific treatment chemicals, emergency disinfection or decontamination procedures and other requirement.

However, none of the guidance is obligatory. Consequently, poor practice in operation and management can result in bacterial overgrowth, increases in legionellae, and mist emissions that contain a significant dose of pathogenic legionellae. This regulation requires that all owners of cooling towers ensure proper maintenance of the cooling towers, to protect the public and address this public health threat.

Further, these regulations require all general hospitals and residential health care facilities (i.e., nursing homes) to develop a sampling plan, report the results, and take necessary actions to protect the safety of their patients or residents. The details of each facility's sampling plan and remedial measures will depend on the risk factors for acquiring Legionnaires' disease in the population served by the hospital or nursing home.

Most people in nursing homes should be considered at risk, as residents are typically over 50 years of age. In general hospitals, persons at risk include those over 50 years of age, as well as those receiving chemotherapy, those undergoing transplants, and other persons housed on healthcare units that require special precautions. Additional persons who might be at increased risk for acquiring Legionnaires' disease include persons on high-dose steroid therapy and persons with chronic lung disease. Certain facilities with higher risk populations, such as those with hematopoietic stem-cell transplant (HSCT) and solid organ transplant units, require more protective measures.

An environmental assessment involves reviewing facility characteristics, hot and cold water supplies, cooling and air handling systems and any chemical treatment systems. The purpose of the assessment is to discover any vulnerabilities that would allow for amplification of Legionella spp. and to determine appropriate response actions in advance of any environmental sampling for Legionella. Initial and ongoing assessment should be conducted by a multidisciplinary team that represents the expertise, knowledge and functions related to the facility's operation and service. A team should include, at a minimum, representatives from the following groups: Infection Control; Physical Facilities Management; Engineering; Clinicians; Laboratory; and Hospital Management.

These regulations, which originally became effective on August 17, 2015, implemented important requirements that protect the public from the threat posed by Legionella. To ensure that protection is maintained, the Commissioner of Health and the Public Health and Health Planning Council have determined it necessary to file these regulations on an emergency basis. Public Health Law § 225, in conjunction with State Administrative Procedure Act § 202(6) empowers the Council and the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.

Subject: Protection Against Legionella.

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

Text of emergency rule: Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 225(5)(a) of the Public Health Law, Part 4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added, to be effective upon filing with the Secretary of State, to read as follows:

4.1 Scope.

All owners of cooling towers, and all general hospitals and residential health care facilities as defined in Article 28 of the Public Health Law, shall comply with this Part.

4.2 Definitions.

As used in this Part, the following terms shall have the following meanings:

(a) Building. The term "building" means any structure used or intended for supporting or sheltering any use or occupancy. The term shall be construed as if followed by the phrase "structure, premises, lot or part thereof" unless otherwise indicated by the text.

(b) Commissioner. The term "commissioner" means the New York State Commissioner of Health.

(c) Cooling Tower. The term "cooling tower" means a cooling tower, evaporative condenser or fluid cooler that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration or energy production system.

(d) Owner. The term "owner" means any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of the premises.

4.3 Registration.

All owners of cooling towers shall register such towers with the department within 30 days after the effective date of this Part. Thereafter, all owners of cooling towers shall register such towers with the department prior to initial operation, and whenever any owner of the cooling tower changes. Such registration shall be in a form and manner as required by the commissioner and shall include, at a minimum, the following information:

(a) street address of the building at which the cooling tower is located, with building identification number, if any;

(b) intended use of the cooling tower;

(c) name(s), address(es), telephone number(s), and email address(es) of all owner(s) of the building;

(d) name of the manufacturer of the cooling tower;

(e) model number of the cooling tower;

(f) specific unit serial number of the cooling tower;

(g) cooling capacity (tonnage) of the cooling tower;

(h) basin capacity of the cooling tower;

(i) whether systematic disinfection is maintained manually, through timed injection, or through continuous delivery;

(j) the contractor or employee engaged to inspect and certify the cooling tower; and

(k) commissioning date of the cooling tower.

4.4 Culture sample collection and testing; cleaning and disinfection.

(a) All owners of cooling towers shall collect samples and obtain culture testing:

(1) within 30 days of the effective date of this Part, unless such culture testing has been obtained within 30 days prior to the effective date of this Part, and shall take immediate actions in response to such testing, including interpreting Legionella culture results, if any, as specified in Appendix 4-A.

(2) in accordance with the maintenance program and plan, and shall take immediate actions in response to such testing as specified in the plan, including interpreting Legionella culture results, if any, as specified in Appendix 4-A; provided that if a maintenance program and plan has not yet been obtained in accordance with section 4.6 of this Part, bacteriological culture samples and analysis (dip slides or heterotrophic plate counts) to assess microbiological activity shall be obtained, at intervals not exceeding 90 days while the tower is in use, and any immediate action in response to such testing shall be taken, including interpreting Legionella culture results, if any, as specified in Appendix 4-A.

(b) Any person who performs cleaning and disinfection shall be a commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower and certified in accordance with the requirements of Article 33 of the Environmental Conservation Law and 6 NYCRR Part 325, or a pesticide apprentice under the supervision of a certified applicator.

(c) Only biocide products registered by the New York State Department of Environmental Conservation may be used in disinfection.

(d) All owners shall ensure that all cooling towers are cleaned and disinfected when shut down for more than five days.

4.5 Inspection and certification.

(a) Inspection. All owners of cooling towers shall inspect such towers within 30 days of the effective date of this Part, unless such tower has been inspected within 30 days prior to the effective date of this Part. Thereafter, owners shall ensure that all cooling towers are inspected at intervals not exceeding every 90 days while in use. All inspections shall be

performed by a: New York State licensed professional engineer; certified industrial hygienist; 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, as incorporated by section 4.6 of this Part.

(1) Each inspection shall include an evaluation of:

(i) the cooling tower and associated equipment for the presence of organic material, biofilm, algae, and other visible contaminants;

(ii) the general condition of the cooling tower, basin, packing material, and drift eliminator;

(iii) water make-up connections and control;

(iv) proper functioning of the conductivity control; and

(v) proper functioning of all dosing equipment (pumps, strain gauges).

(2) Any deficiencies found during inspection will be reported to the owner for immediate corrective action. A person qualified to inspect pursuant to paragraph (a) of this section shall document all deficiencies, and all completed corrective actions.

(3) All inspection findings, deficiencies, and corrective actions shall be reported to the owner, recorded, and retained in accordance with this Part, and shall also be reported to the department in accordance with section 4.10 of this Part.

(b) Certification. Each year, the owner of a cooling tower shall obtain a certification from a person identified in paragraph (a) of this section, that such cooling tower was inspected, tested, cleaned, and disinfected in compliance with this Part, that the condition of the cooling tower is appropriate for its intended use, and that a maintenance program and plan has been developed and implemented as required by this Part. Such certification shall be obtained by November 1, 2016, and by November 1 of each year thereafter. Such certification shall be reported to the department.

4.6 Maintenance program and plan.

(a) By March 1, 2016, and thereafter prior to initial operation, owners shall obtain and implement a maintenance program and plan developed in accordance with section 7.2 of Legionellosis: Risk Management for Building Water Systems (ANSI/ASHRAE 188-2015), 2015 edition with final approval date of June 26, 2015, at pages 7-8, incorporated herein by reference. The latest edition of ASHRAE 188-2015 may be purchased from the ASHRAE website (www.ashrae.org) or from ASHRAE Customer Service, 1791 Tullie Circle, NE, Atlanta, GA 30329-2305. E-mail: orders@ashrae.org. Fax: 678-539-2129. Telephone: 404-636-8400, or toll free 1-800-527-4723. Copies are available for inspection and copying at: Center for Environmental Health, Corning Tower Room 1619, Empire State Plaza, Albany, NY 12237.

(b) In addition, the program and plan shall include the following elements:

(1) a schedule for routine bacteriological sampling and analysis (dip slides or heterotrophic plate counts) to assess microbiological activity and a schedule for Legionella sampling and culture analysis; provided that where the owner is a general hospital or residential health care facility, as defined in Article 28 of the Public Health Law, routine testing shall be performed at a frequency in accordance with the direction of the department.

(2) emergency sample collection and submission of samples for Legionella culture testing to be conducted in the case of events including, but not limited to:

(i) power failure of sufficient duration to allow for the growth of bacteria;

(ii) loss of biocide treatment sufficient to allow for the growth of bacteria;

(iii) failure of conductivity control to maintain proper cycles of concentration;

(iv) a determination by the commissioner that one or more cases of legionellosis is or may be associated with the cooling tower, based upon epidemiologic data or laboratory testing; and

(v) any other conditions specified by the commissioner.

(3) immediate action in response to culture testing, including interpreting Legionella culture results, if any, as specified in Appendix 4-A; provided that where the owner is a general hospital or residential health care facility, as defined in Article 28 of the Public Health Law, the provisions shall additionally require immediately contacting the department for further guidance, but without any delay in taking any action specified in Appendix 4-A.

(c) An owner shall maintain a copy of the plan required by this subdivision on the premises where a cooling tower is located. Such plan shall be made available to the department or local health department immediately upon request.

4.7 Recordkeeping.

An owner shall keep and maintain records of all inspection findings, deficiencies, corrective actions, cleaning and disinfection, and tests performed pursuant to this Part, and certifications, for at least three years. An owner shall maintain a copy of the maintenance program and plan required by this Part on the premises where a cooling tower is located. Such records and plan shall be made available to the department or local health department immediately upon request.

4.8 Discontinued use.

The owner of a cooling tower shall notify the department within 30 days after removing or permanently discontinuing use of a cooling tower. Such notice shall include a statement that such cooling tower has been disinfected and drained in accordance with the same procedures as set forth in the shutdown plan, as specified in the maintenance program and plan required pursuant to this Part.

4.9 Enforcement.

(a) An officer, employee or agent of the department or local health department may enter onto any property to inspect the cooling tower for compliance with the requirements of this Part, in accordance with applicable law.

(b) Where an owner does not register, obtain certification, clean or disinfect, culture test or inspect a cooling tower within the time and manner set forth in this Part, the department or local health department may determine that such condition constitutes a nuisance and may take such action as authorized by law. The department or local health department may also take any other action authorized by law.

(c) A violation of any provision of this Part is subject to all civil and criminal penalties as provided for by law. Each day that an owner remains in violation of any provision of this Part shall constitute a separate and distinct violation of such provision.

4.10 Electronic registration and reporting.

(a)(1) Within 30 days of the effective date of this Part, and thereafter within 10 days after any action required by this Part, owners shall electronically input the following information in a statewide electronic system designated by the commissioner:

(i) registration information;

(ii) date of last routine culture sample collection, sample results, and date of any required remedial action;

(iii) date of any legionella sample collection, sample results, and date of any required remedial action;

(iv) date of last cleaning and disinfection;

(v) dates of start and end of any shutdown for more than five days;

(vi) date of last certification and date when it was due;

(vii) date of last inspection and date when it was due;

(viii) date of discontinued use; and

(ix) such other information as shall be determined by the department.

(2) The commissioner may suspend this requirement in the event that the electronic system is not available.

(b) The data in the system referenced in paragraph (a) shall be made publicly available, and shall be made fully accessible and searchable to any local health department. Nothing in this Part shall preclude a local health department from requiring registration and reporting with a local system or collecting fees associated with the administration of such system.

4.11 Health care facilities.

(a) All general hospitals and residential health care facilities, as defined in Article 28 of the Public Health Law, shall, as the department may determine appropriate:

(1) adopt a Legionella sampling plan for its facilities' potable water distribution system;

(2) report the results of such sampling; and

(3) take necessary responsive actions.

(b) With respect to such general hospitals and residential health care facilities, the department shall investigate to what extent, if any, requirements more stringent than those set forth in this Part are warranted.

4.12 Severability.

If any provisions of this Part or the application thereof to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons, entities, and circumstances.

Appendix 4-A

Interpretation of Legionella Culture Results from Cooling Towers

Legionella Test Results in CFU[1] /ml	*Approach*
No detection (< 10 CFU /ml)	*Maintain treatment program and Legionella monitoring.*

For levels at ≥ 10 CFU /ml but < 1000 CFU /ml perform the following:	*o Review treatment program.* *o Institute immediate online disinfection[2] to help with control.* *o Retest the water in 3 – 7 days.* • *Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.5(a). Continue with regular maintenance strategy.* • *If < 100 CFU /ml repeat online disinfection[2] and retest.* • *If ≥ 100 CFU /ml but < 1000 CFU /ml further investigate the water treatment program and immediately perform online disinfection.[2] Retest and repeat attempts at control strategy.* *o If ≥ 1000 CFU /ml undertake control strategy as noted below.*
For levels ≥ 1000 CFU /ml perform the following:	*o Review the treatment program.* *o Institute immediate online decontamination[3] to help with control.* *o Retest the water in 3 – 7 days.* • *Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.5(a). Continue with regular maintenance strategy.* • *If < 100 CFU /ml repeat online disinfection[2] and retest.* • *If ≥ 100 CFU /ml but < 1000 CFU /ml further investigate the water treatment program and immediately perform online disinfection.[2] Re-test and repeat attempts at control strategy.* • *If ≥ 1000 CFU /ml carry out system decontamination.[4]*

[1] *Colony forming units.*

[2] *Online disinfection means – Dose the cooling tower water system with either a different biocide or a similar biocide at an increased concentration than currently used.*

[3] *Online decontamination means – Dose the recirculation water with a chlorine-based compound equivalent to at least 5 mg/l (ppm) free residual chlorine for at least one hour; pH 7.0 to 7.6.*

[4] *System decontamination means – Maintain 5 to 10 mg/l (ppm) free residual chlorine for a minimum of one hour; drain and flush with disinfected water; clean wetted surface; refill and dose to 1 – 5 mg/l (ppm) of free residual chlorine at pH 7.0 – 7.6 and circulate for 30 minutes. Refill, re-establish treatment and retest for verification of treatment.*

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 8, 2016.

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: regsqna@health.ny.gov

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council (PHHPC) is authorized by Section 225 of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC) subject to the approval of the Commissioner of Health. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life or health, or the preservation or improvement of public health, in the state of New York.

Legislative Objectives:

This rulemaking is in accordance with the legislative objective of PHL Section 225 authorizing the PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize health and safety. Specifically, these regulations establish requirements for cooling towers relating to: registration, reporting and recordkeeping; testing; cleaning and disinfection; maintenance; inspection; and certification of compliance. Additionally, these regulations require general hospitals and nursing homes to implement a Legionella sampling plan and take necessary responsive actions, as the department may deem appropriate.

Needs and Benefits:

Improper maintenance of cooling towers can contribute to the growth and dissemination of Legionella bacteria, the causative agent of legionellosis. Optimal conditions for growth of Legionella include warm water that is high in nutrients and protected from light. People are exposed to Legionella through inhalation of aerosolized water containing the bacteria. Person-to-person transmission has not been demonstrated. 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 5-30% 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 2005-2014 increased 323% when compared to those reported in the previous ten year period.

Outbreaks of legionellosis have been associated with cooling towers. A cooling tower is an evaporative device that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system. Because water is part of the process of removing heat from a building, these devices require disinfectants—chemicals that kill or inhibit bacteria (including Legionella)—as means of controlling bacterial overgrowth. Overgrowth may result in the normal mists ejected from the tower having droplets containing Legionella.

For example, in 2005, a cooling tower located at ground level adjacent to a hospital in New Rochelle, Westchester County resulted in a cluster of 19 cases of legionellosis and multiple fatalities. Most of the individuals were dialysis patients or companions escorting the patients to their dialysis session. One fatality was in the local neighborhood. The cooling tower was found to have insufficient chemical treatment. The entire tower was ultimately replaced by the manufacturer in order to maintain cooling for the hospital and to protect public health. In June and July of 2008, 12 cases of legionellosis including one fatality were attributed to a small evaporative condenser on Onondaga Hill in Syracuse, Onondaga County. An investigation found that the unit was not operating properly and this resulted in the growth of microorganisms in the unit. Emergency biocide treatment was initiated and proper treatment was maintained. No new cases were then detected thereafter.

Recent work has shown that sporadic cases of community legionellosis are often associated with extended periods of wet weather with overcast skies. A study conducted by the New York State Department of Health that included data from 13 states and one United States municipality noted a dramatic increase in sporadic, community acquired legionellosis cases in May through August 2013. Large municipal sites such as Buffalo, Erie County reported 2- to 3-fold increases in cases without identifying common exposures normally associated with legionellosis. All sites in the study except one had a significant correlation, with some time lag, between legionellosis case onset and one or more weather parameters. It was concluded that large municipalities produce significant mist (droplet) output from hundreds of cooling towers during the summer months. Periods of sustained precipitation, high humidity, cloud cover, and high dew point may lead to an "urban cooling tower" effect. The "urban cooling tower" effect is when a metropolitan area with hundreds of cooling towers acts as one large cooling tower producing a large output of drift, which is entrapped by humid air and overcast skies.

More recently, 133 cases of legionellosis, which included 16 fatalities, occurred in Bronx, NY (July-September, 2015). This event was preceded by an outbreak in Co-Op City in the Bronx, from December 2014 to January 2015, which involved 8 persons and no fatalities. Both of these outbreaks have been attributed to cooling towers, and emergency disinfection of compromised towers helped curtail these outbreaks. These events highlight the need for proper maintenance of cooling towers.

The heating, ventilation, and air-conditioning (HVAC) industry has issued guidelines on how to: seasonally start a cooling tower; treat it with biocides and other chemicals needed to protect the components from scale and corrosion; set cycles of operations that determine when fresh water is needed; and shut down the tower at the end of the cooling season. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has recently released a new Standard entitled Legionellosis: Risk Management for Building Water Systems (ANSI/ASHRAE Standard 188-2015). Section 7.2 of that document outlines components of the operations and management plan for cooling towers. The industry also relies on other guidance for specific treatment chemicals, emergency disinfection or decontamination procedures, and other requirements.

However, none of the guidance is obligatory. Consequently, maintenance deficiencies such as poor practice in operation and management can result in bacterial overgrowth, increases in Legionella, and mist emissions that contain pathogenic legionellae. This regulation requires that all owners of cooling towers ensure proper maintenance of the cooling towers, to protect the public and address this public health threat.

Further, these regulations requires that all owners of cooling towers ensure proper maintenance of the cooling tower Legionella sampling plan for their potable water system, report the results, and take necessary actions to protect the safety of their patients or residents, as the Department may deem appropriate. The details of each facility's sampling plan and remedial measures will depend on the risk factors for acquiring Legionnaires' disease in the population served by the hospital or nursing home.

Most people in nursing homes should be considered at risk, as residents are typically over 50 years of age. In general hospitals, persons at risk include those over 50 years of age, as well as those receiving chemotherapy, those undergoing transplants, and other persons housed on healthcare units that require special precautions. Additional persons who might be at increased risk for acquiring Legionnaires' disease include persons on high-dose steroid therapy and persons with chronic lung disease. Certain facilities with higher risk populations, such as those with hematopoietic stem-cell transplant (HSCT) and solid organ transplant units, require more protective measures.

An environmental assessment involves reviewing facility characteristics, hot and cold water supplies, cooling and air handling systems, and any chemical treatment systems. The purpose of the assessment is to discover any vulnerabilities that would allow for amplification of Legionella and to determine appropriate response actions in advance of any environmental sampling for Legionella. Initial and ongoing assessment should be conducted by a multidisciplinary team that represents the expertise, knowledge, and functions related to the facility's operation and service. A team should include, at a minimum, representatives from the following groups: Infection Control, Physical Facilities Management, Engineering, Clinicians, Laboratory, and Hospital Management.

Costs:

Costs to Private Regulated Parties:

Building owners already incur costs for routine operation and maintenance of cooling towers. This regulation establishes the following new requirements:

- Routine Bacteriological Culture Testing – The regulations require routine bacteriological testing pursuant to their cooling tower maintenance program and plan. The cost per dip slide test is $3.50. Assuming that some plans may require tests be performed twice a week, this could result in an annual cost of $364. If heterotrophic plate count analysis is used the cost per sample on average is $25.
- Emergency Legionella Culture Testing – Owners of cooling towers are required to conduct additional testing for Legionella in the event of disruption of normal operations or process control, or when indicated by epidemiological evidence. The average cost of each sample analysis is estimated to be approximately $125.00.
- Maintenance Program and Plan Development – The formulation of a cooling tower program and sampling plan would require 4 to 8 hours at $150 per hour ($600 to $1200). The range represents the cost for reviewing and modifying an existing plan versus the preparation of a new plan.
- Inspection – Owners of cooling towers shall obtain the services of a professional engineer (P.E.), certified industrial hygienist (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, for inspection of the cooling towers at intervals not exceeding 90 days while in use. The cost of such services is estimated to be approximately $150.00 per hour and estimated to take approximately eight (8) hours.
- Annual Certification – The same persons qualified to perform inspections are qualified to perform annual certifications. The certification can follow one of the required inspections and requires some additional evaluation and considerations. The cost of such services is estimated to be approximately $150.00 per hour and is estimated to take approximately four (4) hours.
- Emergency Cleaning and Disinfection – If emergency cleaning and disinfection is required, owners of cooling towers are required to obtain the services of a certified commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower, or a pesticide apprentice under the supervision of a certified applicator. The cost of such services is estimated to be approximately $5,000.00 for labor, plus the cost of materials.
- Recordkeeping and Electronic Reporting – Owners of cooling towers are required to maintain certain specified records and to electronically report certain specified information. The costs of these administrative activities are predicted to be minimal.
- Health Care Facilities – The cost of adopting a sampling plan for Article 28 facilities is dependent upon any existing plan and the status of existing recordkeeping. It is estimated that with prior records and a maintenance plan the time required should a consultant be hired would be 6.5 hours at $150 per hour ($975). Without a prior plan and poor maintenance documentation the time required would be 13 hours at $150 per hour ($1950). It is anticipated that facilities may develop the plan using existing staff.

Costs to State Government and Local Government:

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.

Local Government Mandates:

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with the SSC through a local sanitary code. PHL § 228. Local governments have the power to enforce the provisions of the State Sanitary Code, including this new Part, utilizing both civil and criminal options available. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

Paperwork:

The regulation imposes new registration, reporting and recordkeeping requirements for owners of cooling towers.

Duplication:

This regulation does not duplicate any state requirements.

Alternatives:

The no action alternative was considered. Promulgating this regulation was determined to be necessary to address this public health threat.

Federal Standards:

There are no federal standards or regulations pertaining to registration, maintenance, operation, testing, and inspection for cooling towers.

Compliance Schedule:

On August 17, 2015, when this regulation first became effective, owners were given until September 16, 2015, to register their cooling towers and perform bacteriological sampling. Now that the deadline has past, all owners should have registered their cooling towers, and any owners that have not registered their cooling towers must come into compliance immediately. All owners must register such towers prior to initial operation.

By March 1, 2016, all owners of existing cooling towers must obtain and implement a maintenance program and plan. Until such plan is obtained, culture testing must be performed every 90 days, while the tower is in use.

All owners must inspect their cooling towers at least every 90 days while in use. All owners of cooling towers shall obtain a certification that regulatory requirements have been met by November 1, 2016, with subsequent annual certifications by November 1st of each year.

Owners must register cooling towers and report certain actions, using a statewide electronic system. Reportable events include date of sample collections; date of cleaning and disinfection; start and end dates of any shutdown lasting more than five days; dates of last inspection and when due; dates of last certification and when due; and date of discontinued use. These events must be reported to the statewide electronic system within 10 days of occurrence.

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. This could include small businesses. At this time, it is not possible to determine the number of small businesses so affected. This regulation affects local governments by establishing requirements for implementing, administering, and enforcing elements of this Part. 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:

Small businesses that are also owners of cooling towers must comply with all provisions of this Part. A violation of any provision of this Part is subject to all civil and criminal penalties as provided for by law. Each day that an owner remains in violation of any provision of this Part shall constitute a separate and distinct violation of such provision.

Professional Services:

To comply with inspection and certification requirements, small businesses 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 will need to secure laboratory services for routine culture sample testing and, if certain events occur, emergency Legionella culture testing.

To comply with disinfection requirements, small businesses will need to obtain the services of a commercial pesticide applicator or pesticide technician, or pesticide apprentice under supervision of a commercial pesticide applicator. These qualifications are already required for the properly handling of biocides that destroy Legionella.

Compliance Costs:

Costs to Private Regulated Parties:

Building owners already incur costs for routine operation and maintenance of cooling towers. This regulation establishes the following new requirements:

- Routine Bacteriological Culture Testing – The regulations require routine bacteriological testing pursuant to industry standards. The cost per test is $3.50. Assuming tests are performed twice a week, this would result in an annual cost of $364.
- Emergency Legionella Culture Testing – Owners of cooling towers are required to conduct additional testing for Legionella in the event of disruption of normal operations. The average cost of each sample analysis is estimated to be approximately $125.00.
- Inspection – Owners of cooling towers shall obtain the services of a professional engineer (P.E.), certified industrial hygienist (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; for inspection of the cooling towers at intervals not exceeding once every 90 days while the cooling towers are in use. The cost of such services is estimated to be approximately $150.00 per hour and estimated to take approximately eight (8) hours.
- Annual Certification – The same persons qualified to perform inspections are qualified to perform annual certifications. The cost of such services is estimated to be approximately $150.00 per hour and is estimated to take approximately four (4) hours.
- Emergency Cleaning and Disinfection – If emergency cleaning and disinfection is required, owners of cooling towers are required to obtain the services of a certified commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower, or a pesticide apprentice under the supervision of a certified applicator. The cost of such services is estimated to be approximately $5,000.00 for labor, plus the cost of materials.
- Recordkeeping and Electronic Reporting – Owners of cooling towers are required to maintain certain specified records and to electronically report certain specified information. The costs of these administrative activities are predicted to be minimal.
- The formulation of a cooling tower program and sampling plan would require 4 to 8 hours at $150 per hour ($600 to $1200). The range represents the cost for reviewing and modifying an existing plan versus the preparation of a new plan.
- Formulation of a sampling plan for Article 28 facilities is dependent upon any existing plan and the status of existing recordkeeping. It is estimated that with prior records and a maintenance plan the time required should a consultant be hired would be 6.5 hours at $150 per hour ($975). Without a prior plan and poor maintenance documentation the time required would be 13 hours at $150 per hour ($1950). It is anticipated that facilities may develop the plan using existing staff.

Costs to State Government and Local Government:

State and local governments possess authority to enforce compliance with these regulations. 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 by a reduction in the need to respond to community legionellosis outbreaks.

Economic and Technological Feasibility:

Although there will be an impact of building owners, including small businesses, compliance with the requirements of this regulation is considered economically and technologically feasible as it enhances and enforces existing industry best practices. The benefits to public health are anticipated to outweigh any costs. This regulation is necessary to protect public health.

Minimizing Adverse Impact:

The New York State Department of Health will assist local governments by providing a cooling tower registry and access to the database, technical consultation, coordination, and information and updates.

Small Business and Local Government Participation:

Development of this regulation has been coordinated with New York City.

Cure Period:

Violation of this regulation can result in civil and criminal penalties. In light of the magnitude of the public health threat posed by the improper maintenance and testing of cooling towers, the risk that some small businesses will not comply with regulations justifies the absence of a cure period.

Rural Area Flexibility Analysis

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas. The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any disproportionate reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

Nature of the Impact:

The Department of Health expects there to be a positive impact on jobs or employment opportunities. The requirements in the regulation generally coincide with industry standards and manufacturers specification for the operation and maintenance of cooling towers. However, it is expected that a subset of owners have not adequately followed industry standards and will now hire firms or individuals to assist them with compliance and to perform inspections and certifications.

Categories and Numbers Affected:

The Department anticipates no negative impact on jobs or employment opportunities as a result of the proposed regulations.

Regions of Adverse Impact:

The Department anticipates no negative impact on jobs or employments opportunities in any particular region of the state.

Minimizing Adverse Impact:

Not applicable.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Masters-in-Education Teacher Incentive Scholarship Program

I.D. No. ESC-22-16-00009-E
Filing No. 499
Filing Date: 2016-05-17
Effective Date: 2016-05-17

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

Action taken: Addition of section 2201.17 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 669-f

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2016 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students attending a New York State public institution of higher education who pursue a graduate program of study in an education program leading to a career as a teacher in public elementary or secondary education. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of the program as provided in the regulation be effective immediately so that students can make informed choices and in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Masters-in-Education Teacher Incentive Scholarship Program.

Purpose: To implement the New York State Masters-in-Education Teacher Incentive Scholarship Program.

Text of emergency rule: New section 2201.17 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.17 New York State Masters-in-Education Teacher Incentive Scholarship Program.

(a) Definitions. As used in section 669-f of the Education Law and this section, the following terms shall have the following meanings:

(1) "Academic excellence" shall mean the attainment of a cumulative grade point average of 3.5 or higher upon completion of an undergraduate program of study from a college or university located within New York State.

(2) "Approved master's degree in education program" shall mean a program registered at a New York State public institution of higher education pursuant to Part 52 of the Regulations of the Commissioner of Education.

(3) "Award" shall mean a New York State Masters-in-Education Teacher Incentive Scholarship Program award pursuant to section 669-f of the New York State education law.

(4) "Elementary and secondary education" shall mean pre-kindergarten through grade 12 in a public school recognized by the board of regents or the university of the state of New York, including charter schools authorized pursuant to article fifty-six of the education law.

(5) "Full-time study" within an approved master's degree in education program shall be defined by the institution.

(6) "Initial certification" shall mean any certification issued pursuant to part 80 of this title which allows the recipient to teach in a classroom setting on a full-time basis.

(7) "Interruption in graduate study or employment" shall mean an allowable temporary period of leave for a definitive length of time due to circumstances approved by the corporation, including, but not limited to, maternity/paternity leave, death of a family member, or military duty.

(8) "Program" shall mean the New York State Masters-in-Education Teacher Incentive Scholarship Program codified in section 669-f of the education law.

(9) "Public institution of higher education" shall mean the state university of New York, as defined in subdivision 3 of section 352 of the education law, or the city university of New York as defined in subdivision 2 of section 6202 of the education law.

(10) "Rank" shall mean an applicant's position, relative to all other applicants, based on cumulative grade point average upon completion of an undergraduate program of study from a college or university located within New York State.

(11) "School year" shall mean the period commencing on the first day of July in each year and ending on the thirtieth day of June next following.

(12) "Successful completion of a term" shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-f of the Education Law; (ii) maintained full-time status as defined in this section; and (iii) possessed a cumulative grade point average of 3.5 or higher as of the date of the certification by the institution.

(13) "Teach in a classroom setting on a full-time basis" shall mean continuous employment providing classroom instruction in a public elementary or secondary school, including charter schools and public pre-kindergarten programs, located within New York State, for at least 10 continuous months, each school year, for a number of hours to be determined by the labor contract between the teacher and employer, or if none of the above apply, the chief administrator of the school.

(b) Eligibility. An applicant must satisfy the eligibility requirements contained in both sections 669-f and 661 of the education law, provided however that an applicant for this Program must meet the good academic standing requirements contained in section 669-f of the education law.

(c) Priorities. If there are more applicants than available funds, the following provisions shall apply:

(1) First priority shall be given to applicants who have received payment of an award pursuant to section 669-f of the education law for the academic year immediately preceding the academic year for which payment is sought and have successfully completed the academic term for which payment is sought. First priority shall include applicants who received payment of an award pursuant to section 669-f of the education law, were subsequently granted an interruption in graduate study by the corporation for the academic year immediately preceding the academic year for which payment is sought and have successfully completed the academic term for which payment is sought. If there are more applicants than available funds, recipients shall be chosen by lottery.

(2) Second priority shall be given to up to five hundred new applicants, within the remaining funds available for the Program, if any. If there are more applicants than available funds, recipients shall be chosen by rank, starting at the applicant with the highest cumulative grade point average beginning in the 2016-17 academic year. In the event of a tie, distribution of any remaining funds shall be done by lottery.

(d) Administration.

(1) Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.

(2) Recipients of an award shall:

(i) execute a service contract prescribed by the corporation;

(ii) request payment at such times, on forms and in a manner specified by the corporation;

(iii) receive such awards for not more than four academic terms, or its equivalent, of full-time graduate study leading to certification as a public elementary or secondary classroom teacher, including charter schools, excluding any allowable interruption of study;

(iv) facilitate the submission of information from their employer attesting to the recipient's job title, the full-time work status of the recipient, and any other information necessary for the corporation to determine compliance with the program's employment requirements on forms and in a manner prescribed by the corporation; and

(v) provide any other information necessary for the corporation to determine compliance with the program's requirements.

(e) Amounts.

(1) The amount of the award shall be determined in accordance with section 669-f of the education law.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time upon successful completion of the term subject to the verification and certification by the institution of the recipient's grade point average and other eligibility requirements.

(3) Awards shall be reduced by the value of other educational grants and scholarships limited to tuition, as authorized by section 669-f of the education law.

(f) Failure to comply.

(1) All award monies received shall be converted to a 10-year student loan plus interest for recipients who fail to meet the statutory, regulatory, contractual, administrative or other requirement of this program.

(2) The interest rate for the life of the loan shall be fixed and equal to that published annually by the U.S. Department of Education for undergraduate unsubsidized Stafford loans at the time the recipient signed the service contract with the corporation.

(3) Interest shall begin to accrue on the day each award payment is disbursed to the institution.

(4) Interest shall be capitalized on the day the award recipient violates any term of the service contract or the date the corporation deems the recipient was no longer able or willing to perform the terms of the service contract. Interest on this capitalized amount shall continue to accrue and be calculated using simple interest until the amount is paid in full.

(5) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, prorate the amount owed commensurate with service completed, discharge the amount owed, or take such other appropriate action.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 14, 2016.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Masters-in-Education Teacher Incentive Scholarship Program ("Program") is codified within Article 14 of the Education Law. In particular, Subpart A of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-f to the Education Law. Subdivision 6 of section 669-f of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objectives and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance

from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 669-f to create the "New York State Masters-in-Education Teacher Incentive Scholarship Program" (Program). The objective of this Program is to incent New York's highest-achieving undergraduate students to pursue teaching as a profession.

Needs and benefits:

According to a recent Wall Street Journal article, many experts call teacher quality the most important school-based factor affecting learning. Studies underscore the impact of highly effective teachers and the need to put them in classrooms with struggling students to help them catch up. To improve teacher quality, New York State has significantly raised the bar by modifying the three required exams and adding the Educative Teacher Performance Assessment, known as edTPA, as part of the licensing requirement for all teachers. To supplement this effort, this Program aims to incentivize top undergraduate students to pursue their master's degree in New York State and teach in public elementary and secondary schools (including charter schools) across the State.

The Program provides for annual tuition awards to students enrolled full-time, at a New York State public institution of higher education, in a master's degree in education program leading to a career as a classroom teacher in elementary or secondary education. Eligible recipients may receive annual awards for not more than two academic years of full-time graduate study. The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending a graduate program full-time at the State University of New York (SUNY). Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Masters-in-Education Teacher Incentive Scholarship Program award must sign a service agreement and agree to teach in the classroom at a New York State public elementary or secondary school, which includes charter schools, for five years following completion of their master's degree. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

a. There are no application fees, processing fees, or other costs to the applicants of this Program.

b. It is anticipated that there will be no costs to the agency for the implementation of, or continuing compliance with this rule.

c. The maximum cost of the Program to the State is $1.5 million in the first year, based upon budget estimates.

d. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

e. The source of the cost data in (c) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application, together with supporting documentation, for eligibility. Each year recipients will file an electronic request for payment together with supporting documentation for up to two years of award payments. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to the State Education Department, the State University of New York and the City University of New York with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 679-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal undergraduate unsubsidized Stafford loan rate in the event that the award is converted to a student loan.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.17 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to students attending a New York State public institution of higher education who pursue their master's degree in an education program leading to a career as a teacher in public elementary or secondary education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

Office of Mental Health

NOTICE OF ADOPTION

Directors of Mental Hygiene Facilities as Representative Payees

I.D. No. OMH-10-16-00005-A

Filing No. 482

Filing Date: 2016-05-12

Effective Date: 2016-06-01

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

Action taken: Addition of Part 522 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 29.23, 33.07 and 43.03; 20 CFR section 404.2040(d)

Subject: Directors of Mental Hygiene Facilities as Representative Payees.

Purpose: Implement provisions of Mental Hygiene Law section 33.07(e) regarding the management and protection of patient funds.

Text or summary was published in the March 9, 2016 issue of the Register, I.D. No. OMH-10-16-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Kim Breen, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: regs@omh.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.

Department of Motor Vehicles

NOTICE OF ADOPTION

Suffolk County Motor Vehicle Use Tax

I.D. No. MTV-13-16-00004-A

Filing No. 494

Filing Date: 2016-05-17

Effective Date: 2016-06-01

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

Action taken: Amendment of section 29.12(b) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); Tax Law, section 1202(g)

Subject: Suffolk County motor vehicle use tax.

Purpose: To increase the Suffolk County motor vehicle use tax.

Text or summary was published in the March 30, 2016 issue of the Register, I.D. No. MTV-13-16-00004-P.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Wyoming County Motor Vehicle Use Tax

I.D. No. MTV-22-16-00003-P

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

Proposed Action: This is a consensus rule making to amend section 29.12(q) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); Tax Law, sections 1201(e), 1202(a) and (c)

Subject: Wyoming County motor vehicle use tax.

Purpose: Raises the amount of the Wyoming County motor vehicle use tax.

Text of proposed rule: Subdivision (q) of section 29.12 is amended to read as follows:

(q) Wyoming County. The Wyoming County Legislature adopted Local Law No. 1 of 2003 on March 11, 2003 to establish a Wyoming County Motor Vehicle Use Tax, *and adopted Local Law No. 1 on May 10, 2016 to increase the fees for such use tax*. The Chairman of the County Board of Supervisors of Wyoming County entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations made on and after July 1, 2003 and upon the renewal of registrations expiring on and after September 1, 2003. The County Treasurer of Wyoming County is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Wyoming County referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be $5.00 per annum *for such motor vehicles weighing 3,500 lbs. or less and $10.00 per annum for such motor vehicles weighing in excess of 3,500 lbs.* [except when owned and used in connection with the operation of a farm by the owner or tenant thereof]. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Wyoming County, shall be [$5.00] *$10.00* per annum, *except when owned and used in connection with the operation of a farm by the owner or tenant thereof and carrying a farm plate. The increased fees provided for in Local Law No. 1 of 2016 shall apply to original registrations made on or after September 1, 2016 and upon renewal registrations expiring on and after November 1, 2016*.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 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, Department of Motor Vehicles, 6 Empire State Plaza, Room 522A, Albany, NY 12228, (518) 474-0871

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

Consensus Rule Making Determination

This proposed regulation would amend 15 NYCRR Part 29.12(q) to increase the Wyoming County motor vehicle use tax collected by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law sections 1201(e), 1202(a) and 1202(c) and Vehicle and Traffic Law sections 215(a) and 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On May 10, 2016, the Wyoming County Board of Supervisors enacted a local law providing for an increase in the motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this local law, the use tax will be $5 per annum on a passenger vehicle weighing 3,500 pounds or less, $10 per annum on a passenger vehicle weighing more than 3,500 pounds, and $10 per annum on all commercial vehicles. Vehicles used only in connection with the operation of a farm by the owner or tenant of the farm and which carry a farm plate are exempt from the use tax.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax and the amount of the tax, i.e., it must be collected per the mandate of the Wyoming County local law. DMV is merely carrying out the will expressed by the Wyoming County Board of Supervisors.

Job Impact Statement

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Special and Reserved Series Plates

I.D. No. MTV-22-16-00007-P

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

Proposed Action: Amendment of sections 16.1, 16.3 and 16.5 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 404 and 411-a

Subject: Special and reserved series plates.

Purpose: Establish guidelines for the issuance of special and reserved series plates.

Text of proposed rule: Section 16.1 is amended to read as follows:

Section 16.1 Introduction

[Section] *Sections* 404 *and 411-a* of the Vehicle and Traffic Law authorizes the Commissioner of Motor Vehicles to issue "special number plates" to applicants, upon payment of [a] *the* service charge [of $15] *prescribed by such sections of such law*, in addition to the regular registration fee prescribed by Section 401 of such law.

Subdivision (a) of section 16.3 is amended and a new subdivision (c) is added to read as follows:

(a) For the purposes of Section 404 of the Vehicle and Traffic Law and these regulations, a special number plate shall be a *number plate or a* set of number plates[, unless only one such plate is issued for that period,] containing not more than eight letters, numerals or combination thereof, and which is reserved by the commissioner for issuance in accordance with the provisions of this Part, [including] *and shall be either a* reserved series *or a personalized plate*. For the purposes of determining the number of letters or numerals, a space or dash shall be considered a letter or numeral. However, special number plate issued to a motorcycle registered pursuant to Section [410] *411-a* of the Vehicle and Traffic Law shall contain not more than six letters, numerals or combination thereof.

(c) For purposes of this Part, a personalized plate is any number plate that bears a plate number that is a combination of letters and/or numerals requested by the applicant and is issued under Vehicle and Traffic Law, Sections 404 or 411-a. Personalized plates shall include, but need not be limited to, plates that have a picture or logo next to, or as a part of the background of, the plate number.

Section 16.5 is repealed and a new section 16.5 is added to read as follows:

Section 16.5 Restrictions.

(a) Personalized plates.

1. No person has a right to a particular personalized plate. Personalized plates are issued by DMV in the sole discretion of the commissioner.

2. Personalized plates bearing a plate number that represents a word, phrase, expression, or that has a meaning, connotation or format that the commissioner deems objectionable shall not be issued. Such plates shall include, but need not be limited to, those that the commissioner determines:

(i) Are obscene, profane, vulgar, repulsive, depraved, or lewd;

(ii) Describe or refer to a sexual or intimate body part, area or function;

(iii) Describe or refer to eliminatory or other bodily functions;

(iv) Are derogatory, contemptuous, degrading, disrespectful or inflammatory;

(v) Express, describe, advertise, advocate, promote, encourage, glorify, or condone violence, crime or unlawful conduct;

(vi) Describe, connote, or refer to illegal drug(s), controlled substance(s) or related paraphernalia;

(vii) May constitute copyright infringement, or infringement of a trademark, trade name, service mark, or patent;

(viii) Refer to, suggest, or may appear to refer to or to suggest any governmental or law enforcement purpose, function or entity;

(ix) Do not have at least one letter, consist of six numbers followed by one letter, or may be misleading or confusing in identifying a plate number (e.g., the substitution of the numeral zero for the letter "O") or

(x) Are reserved for issuance to specific classes of vehicles other than passenger vehicles (e.g., plates assigned to county clerks, members of certain professions, historic motor vehicles, etc.).

3. Personalized plates that the commissioner may deem to be objectionable shall include plates bearing a combination of letters or numerals that in any language, or by means of a slang term, abbreviation, phonetic spelling or mirror image, in the judgment of the commissioner, forms a word, phrase, or expression, or has a meaning or connotation listed in paragraph (2) of this subdivision.

4. The commissioner may determine at any time that a personalized plate is objectionable, regardless of whether the plate is requested, approved but not yet issued, or issued. If, after the commissioner receives a request for a personalized plate, the commissioner deems the requested plate to be objectionable, the commissioner shall deny the applicant's request. In such cases, the applicant shall be deemed to have consented to withdraw the application for the personalized plate. If, after the issuance of a personalized plate, the commissioner deems the issued plate to be objectionable, the commissioner shall invalidate the plate. The registrant will be required to remove the invalidated plate from the registered vehicle and will be issued a standard registration plate. When the commissioner either withdraws approval for a requested personalized plate or invalidates an issued personalized plate, the registrant may select a non-objectionable personalized plate or a non-personalized plate at no additional cost.

(b) Reserved Series.

(1) No person, organization or other entity has a right to a requested reserved series. Reserved series are issued by DMV in the sole discretion of the commissioner.

(2) Reserved series bearing a message, image or other mark that has a meaning, connotation or format that the commissioner deems objectionable shall not be issued. Such series shall include, but not be limited to, those that the commissioner determines are described within subparagraphs (i) through (viii) of paragraph (2) of subdivision two of this section.

(3) The commissioner shall issue an acceptable reserved series upon the applicant's delivery to the Department of:

(a) a bond in a form acceptable to the Department, executed by a surety company authorized by the New York State Department of Financial Services to transact business in the state, in the amount of $6,000; or,

(b) at least 200 non-refundable, pre-paid orders for the proposed plates in the reserved series;

Such delivery shall cover the Department's development costs for the design and production of the approved reserve series. If 200 or more plate orders are received within the two years following the date on which plates in the reserved series are first available for sale, then the commissioner shall not seek to recover against the bond. If fewer than 200 plate orders are received within such time, the commissioner shall be entitled to recover against the bond in an amount proportionate to such shortfall. Any such action against a bond shall be made by crediting the applicant with the service charge prescribed by sections 404 or 411-a of Vehicle and Traffic Law for each plate order timely received within the applicant's reserved series. This paragraph shall not apply to any plates in a proposed series reserved for employees or members of a governmental agency or body where such series cannot be issued to more than 200 individuals because of the criteria established for eligibility for a plate in such series (e.g., plates issued to members of the New York State Court of Appeals).

(4) The commissioner may determine at any time that a plate in a reserved series, or a series itself, is objectionable, regardless of whether the plate is requested, approved but not yet issued, or issued. If, after the commissioner receives a request for such a plate or plates, the commissioner deems the requested plate or plates to be objectionable, the commissioner shall invalidate such plate or plates. If such plate or plates have already been issued, the registrant will be required to remove the invalidated plate from the registered vehicle and will be issued a standard registration plate at no additional cost.

(c) In making any determination under this section, the commissioner shall rely upon the reasonably objective meaning of a proposed plate combination or reserved series and shall not consider or inquire of the applicant's subjective intent.

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

Data, views or arguments may be submitted to: Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles (Commissioner) may enact rules and regulations that regulate and control the exercise of the powers of the Department of Motor Vehicles (DMV). VTL section 404(1) and 404(2) authorize the Commissioner to issue special number plates containing no more than eight letters, numbers or any combination thereof. Section 411-a of the VTL authorizes the Commissioner to issue special number plates for motorcycles containing no more than six letters, numbers or any combination thereof. Both sections 404 and 411-a require applications for special number plates to be made in accordance with regulations promulgated by the Commissioner.

2. Legislative objectives: The purpose of sections 404 and 411-a of the Vehicle and Traffic Law is to authorize the Commissioner to issue special number plates to registrants of motor vehicles and motorcycles, respectively, upon the payment of the required statutory fees. These sections of the VTL authorize the Commissioner to promulgate regulations that establish criteria to evaluate applications for special number plates. The proposed regulation accords with the legislative objective of giving applicants for special plates notice about the DMV's standards and procedures relative to the issuance of such plates.

3. Needs and benefits: The purpose of this proposed rule is to give the public notice about the DMV's criteria for the issuance of special plates. The rulemaking addresses two types of special plates, personalized plates and reserved series plates.

The proposed rule defines personalized plates as, "any number plate that bears a plate number that is a combination of letters and/or numerals requested by the applicant and is issued under Vehicle and Traffic Law, Section 404 or 411-a." The proposed rule authorizes the Commissioner to deny the issuance of a personalized plate if the plate combination's meaning would be deemed objectionable. The rule establishes a non-exclusive list of reasons to deny issuance of a plate, such as if the plate is vulgar or obscene, or if the plate glorifies violence or criminal conduct. The same standards are established for reserved series plates, which are issued at the request of organizations, professions or other entities. The proposed rule provides procedures for the invalidation of personalized and reserved series plates if the Commissioner, subsequent to the issuance of the plates, discovers that such plates are objectionable. If a plate is invalidated, the registrant will be issued a standard plate at no extra cost.

The proposed standards for both personalized and reserved series plates are necessary to advise the public about phrases and words that would be deemed objectionable by the Commissioner. Two recent court cases upheld the government's right to exercise discretion in approving special plates. In Children First Foundation, Inc v. Fiala, 790 F.3d. 328 (2015), the U.S. Court of Appeals for the Second Circuit upheld the Commissioner's denial of a special plate called "Choose Life," because: 1) The special plate program was reasonable and viewpoint neutral and, therefore, created a nonpublic forum since the license plates were not designed for the open exchange of ideas; 2) The program was not facially invalid because regulations that prohibited plates that were ''obscene, lewd, lascivious, derogatory to a particular ethnic or other group, or patently offensive,'' as well as the consistent application of this policy, sufficiently constrained government discretion; 3)The program was consistent with the State's legitimate interests in keeping its roadways safe and avoiding the appearance of endorsement of a controversial issue.

In Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 135 S. Ct. 2239 (2015), the U.S. Supreme Court held that the Texas Department of Motor Vehicles Board rejection of special plate design featuring the Confederate battle flag did not violate the First Amendment's free speech guarantee because specialty plates issued under Texas's statutory scheme conveyed government speech. The U.S. Supreme Court held that Texas's specialty license plates were not a nonpublic forum because Texas was not simply managing government property, but instead was engaging in expressive conduct as the "speaker."

Although the two Courts arrived at their conclusions using different analysis, their holdings clearly give the DMV broad discretion to promulgate reasonable regulations to regulate special plates.

Since the inception of the Children First litigation, the DMV has had a moratorium on the administrative issuance of reserved series plates. Before resuming the issuance of such plates, guidelines are necessary to insure the prudent use of state resources. The design, production and issuance of these plates is costly, labor intensive and often complex. In addition, there is often little customer interest in many of these plates, not only to the fiscal detriment of the State, but also undermining the inefficient use of staff time and resources.

Since the moratorium took effect, the Department has received 317 applications from groups seeking new, administratively-created custom plate series. The DMV also anticipates an increase in statutorily- mandated plates. At least 200 applications for a custom plate are required for production costs to be revenue neutral. Of the 393 existing custom plates, only 90 have at least 200 plate recipients. In fact, 271 plates have less than 100 recipients and 108 plates have less than 10 recipients. By requiring applicants for reserved series plates to post a bond or place at least 200 plate orders to cover the cost of design and production of the plate, with assurance that the bond will be refunded if 200 applications are received within two years of issuance of the series plate, the DMV will conserve necessary State resources.

4. Costs: a. Cost to regulated parties and customers: This proposed rule imposes no costs to customers of personalized plates. The regulation requires applicants for a reserved series plate to post a $6,000 bond, but such bond will be refunded if 200 applications for such plate are received within two years of issuance of the series plate.

b: Costs to the agency and local governments: There is no cost to the agency or to local governments.

c. The information, including the source(s) of such information and the methodologies upon which the cost analysis is based: DMV Custom Plate Office.

5. Local government mandates: There are no local government mandates.

6. Paperwork: There are no paperwork requirements.

7. Duplication: This proposed rulemaking does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: The DMV considered how to obtain two objectives: 1) Issue license plates that are not objectionable to the general public, and 2) Resume the issuance of reserved series plates with no fiscal detriment to the State. The proposed rule represents a fair, balanced approach to address these objectives. A no action alternative was not considered.

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

10. Compliance schedule: The Department and its customers will be able to achieve compliance with the proposed rulemaking upon its Notice of Adoption in the State Register.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

This proposal establishes standards and procedures for the issuance of special license plates. Due to its narrow focus, this rule will not impose an adverse economic impact on reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Changes to the Pathway to Employment Service

I.D. No. PDD-12-16-00001-A
Filing No. 498
Filing Date: 2016-05-17
Effective Date: 2016-06-01

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

Action taken: Amendment of Subpart 635-10 of Title 14 NYCRR.

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

Subject: Changes to the Pathway to Employment Service.

Purpose: To make changes to requirements for the delivery and reimbursement of the Pathway to Employment service.

Text of final rule: Subdivision 635-10.4(h) is amended as follows:

(h) Pathway to employment is a person-centered, comprehensive career/vocational employment planning and support service that provides assistance for individuals to obtain, maintain, or advance in competitive *integrated* employment or self-employment. This service combines an individualized career/vocational planning process that identifies the individual's support needs, with the provision of services that will strengthen the skills needed to obtain, maintain*,* or advance in competitive *integrated* employment *or self-employment*. It engages individuals in identifying a career/vocational direction, provides instruction and training in pre-employment skills, and develops a path for achieving *self-employment or* competitive[,] integrated employment at or above the *state or federal* [New York State] minimum wage.

- Clause 635-10.4(h)(1)(i)(l) is amended and a new clause 635-10.4(h)(1)(i)(r) is added as follows:

(l) *obtaining and assistance in obtaining a minimum of three* community experiences through volunteer opportunities, paid or unpaid internships, mentorships, apprenticeships, job clubs, work site visits, job placement, or other job exploration modalities (Note: individuals participating in paid internships must be paid at least the minimum wage for the type of employment or self-employment sought through the internship opportunity);

(p) customized job development; [and]

(q) planning for self-employment, including identifying skills that could be used to start a business, and identifying business training and technical assistance that could be utilized in achieving self-employment goals[.]*; and*

(r) travel time (transportation) to and from pathway to employment activities with an individual or group. Transportation to another Medicaid Waiver service that includes transportation in the rate may not be billed under pathway to employment services.

- Clauses 635-10.4(h)(1)(ii)(c) and (d) are amended as follows:

(c) preparing a pathway to employment service delivery plan; [and]

(d) preparing a pathway to employment career/vocational plan[.]*;*

- New clauses 635-10.4(h)(1)(ii)(e) – (j) are added as follows:

(e) review of an individual's records and other documentation that provides information to assist in quality career assessment, job development, job coaching, and job retention supports (e.g. ISP, school records, employment history, psychological reports, medical documentation, program service plans, and notes);

(f) communication with family or other members of the individual's circle of support to discuss and address coordination of pathway to employment, progress, issues and challenges;

(g) meetings and communication with staff providing other OPWDD approved services and clinicians that impact an individual's ability to successfully achieve pathway to employment service goals;

(h) documentation of and to support the delivery of pathway to employment services;

(i) travel time (transportation) to and from pathway to employment activities, without the individual/group present, while the staff is being paid for work hours by the provider; and

(j) other activities, as authorized by OPWDD.

• Paragraph 635-10.4(h)(3) is amended as follows:

(3) The number of individuals receiving pathway to employment services simultaneously from a service provider staff shall be limited to no more than *four* [three] individuals*, with the exception of job readiness training which shall be limited to no more than ten individuals.*

• A new paragraph 635-10.4(h)(4) is added as follows and existing paragraphs are renumbered accordingly:

(4) Individuals receiving pathway to employment services who participate in community experiences specified in clause 635-10.4(h)(1)(i)(l) of this subdivision must be involved in a minimum of three different community experiences prior to the completion of the service. If an individual disenrolls from pathway to employment services prior to completion, the allowable services may be billable. The agency must document the services in the form and format specified by OPWDD.

• New paragraph 635-10.4(h)(6) is amended as follows:

(6) Pathway to employment career/vocational plan. The service provider shall develop a pathway to employment career/vocational plan for each individual receiving the service.

(i) The career/vocational plan shall:

(a) identify and focus on the individual's career/vocational and employment goals, employment needs, talents, and natural supports; and

(b) serve as the individual's detailed career/vocational plan for guiding his or her employment supports.

(ii) The pathway to employment provider must complete the career/vocational plan in the form and format specified by OPWDD to include interviews, action steps, career development activities, community-based volunteer experiences, work experiences, and recommendations for future employment related services.

(a) The career/vocational plan must be submitted to OPWDD.

(b) The service provider must share the career/vocational plan with the New York State Education Department- Adult Career and Continuing Education Services (ACCES-VR).

(iii) Unless OPWDD authorizes an extension in accordance with paragraph 635-10.5(ad)(5) of this subpart that specifies a later timeframe for the completion of the plan, the pathway to employment provider shall develop the career /vocational plan no later than 12 months after the date the individual started receiving the service, or the date as of which the individual received 278 hours of the service, whichever occurs first. The pathway to employment provider shall give the career/vocational plan to the individual upon completion of the service.

• A new paragraph 635-10.4(h)(7) is added:

(7) Pathway to employment providers shall not provide pathway to employment services in day training programs/sheltered workshops.

• Paragraph 635-10.4(k)(4) is amended as follows:

(4) Effective July 1, 2015, there shall be no new enrollments into site based prevocational services in day training programs*/sheltered workshops*.

• Subparagraph 635-10.5(ad)(3)(ii) is amended as follows:

(ii) The number of individuals being served simultaneously - Individual (1) or Group (serving two or [three] *four* individuals*; or, for job readiness training, ten individuals*). Group size shall be limited to no more than [three] *four* individuals*, with the exception of job readiness training, which can include up to ten individuals.*

• Paragraph 635-10.5(ad)(4) is deleted and the remaining paragraphs are renumbered accordingly:

[(4) Fee schedule. The hourly fees for the pathway to employment service are as follows:]

[Pathway to Employment—Fee is hourly per person]

[Region	Individual Fee	Group Fee
Region 1	$43.04	$37.68
Region 2	$41.92	$35.64
Region 3	$39.70	$33.74]

• A new subparagraph 635-10.5(ad)(7)(iii) is added as follows:

(iii) Pathway to employment billable service time for job readiness training specified in clause 635-10.4(h)(1)(i)(a) of this Subpart shall be limited to 20 hours of billable service time.

• New subparagraph 635-10.5(ad)(8)(i) is amended as follows:

(i) The service provider shall maintain documentation that the individual receiving pathway to employment services has received the services in accordance with the individual's ISP and pathway to employment service delivery plan (see section 635-10.4(h)[(3)]*(5)* of this Subpart).

• New subparagraph 635-10.5(ad)(8)(iv) is deleted and a new (iv) is added as follows:

(iv) The service provider must maintain a copy of the Letter of Agreement between OPWDD and the NYS Education Department related to pathway to employment services.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 635-10.4(h)(1).

Text of rule and any required statements and analyses may be obtained from: OPWDD Counsel's Office, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd floor, Albany, NY 12229, (518) 474-7700, email: RAU.Unit@opwdd.ny.gov

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

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

Minor, non-substantive, punctuation and grammar changes were made to subparagraph 635-10.4(h)(1)(ii) in order to accommodate new allowable activities that were added to the list of existing allowable activities.

This change does not necessitate revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Business and Local Governments, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

This document contains responses to public comments submitted during the public comment period for proposed regulations concerning changes to Pathway to Employment services. While OPWDD appreciates and has considered all feedback submitted by commenters, this assessment responds only to those comments specific to the content of the emergency proposed regulations.

Comment: Commenters expressed an understanding of, and agreement with, many of the regulatory changes to the service (e.g. increasing the group size for job readiness and the prohibition of Pathway to Employment services in day training programs/sheltered workshops).

Response: OPWDD appreciates the commenters' support of the regulatory changes to the Pathway to Employment service.

Comment: A commenter stated that defining the number of hours of job readiness is burdensome and creates fiscal vulnerability for providers. The commenter suggested that, if the goal is to ensure that providers aren't merely providing the bulk of services in job readiness/classroom type activities, then it would be just as effective to increase the number of hours in each of the respective community experiences since providers are already tracking this anyway. The commenter suggested that OPWDD limit approvals on extensions of hours if providers are providing excessive job readiness and fail to demonstrate good faith efforts to provide community based experiences.

A commenter contended that any service that is offered should be based on an individual's needs, and requested that OPWDD consider amending the 20 hour regulatory standard for job readiness to allow for additional hours based on the needs of a specific individual.

Response: The intent behind the regulatory changes is to minimize/eliminate fiscal vulnerability and other burdens on providers of Pathway to Employment services. The Pathway to Employment service is capped at 278 hours, and 60 of those hours are allowable indirect services. There should not be a need for more than 20 hours of job readiness training. However, if an individual requires more hours of service, an extension may be requested. Consequently, the regulation is being adopted as proposed.

Comment: Commenters expressed concern about the new regulatory provision in 635-10.4(h)(4) requiring a minimum of three different community experiences prior to the completion of the service and that if an individual dis-enrolls from Pathway to Employment services prior to completion, the allowable services may be billable. Commenters are concerned that services may end abruptly and that previous billings will be "invalidated."

A commenter recommends the removal of the language relating to disenrollment and potential non-reimbursement of allowable services. The commenter stated that the addition of this language places the provider at distinct risk for repayment of eligible funds and that, at times, providers have limited control over the disenrollment of an individual from a service prior to the completion of community experiences. The commenter considers that community experiences completed in accordance with OPWDD ADM#2015-07 must be eligible for reimbursement as separately delivered, and not contingent on a minimum of three being accomplished.

Another commenter recommends that the regulations explicitly state that the documentation of good faith attempts to create work experiences is sufficient to justify the services previously provided.

Another commenter stated that the requirement for a minimum of three

community experiences is reasonable and allows for a more person centered service. The commenter stated that the new regulatory provision validates that services have been rendered to the individual even if the individual has not obtained his or her original goals and that such services should be paid for.

Response: The requirement for a minimum of three community experiences is designed to create opportunities for individuals to explore their various skills and talents through participation in a variety of community experiences. The regulation indicates that if an individual dis-enrolls from Pathway to Employment services prior to completion, the allowable services may be billable. OPWDD will issue administrative guidance that provides criteria for billing under these circumstances. Consequently, the regulation is being adopted as proposed.

Comment: A commenter contended that the number of allowable indirect services has increased but the total amount of units of indirect services remains the same. The commenter contended that the indirect services in the discovery process takes more than 60 hours to conduct and this can result in staff time that is unbillable. The commenter recommended that consideration be given to increasing the number of units allowed for indirect services to accommodate the increase in indirect services.

Another commenter stated that there may be legitimate situations where 60 hours of indirect services is not enough. The commenter recommended allowing the agency to make an appeal to OPWDD requesting an increase in the indirect services allotment on a case by case basis.

Response: OPWDD may grant an extension of hours of Pathway to Employment services in accordance with the regulations in subdivision 635-10.5(ad). Such extension could potentially include hours for indirect services. OPWDD's expectation, however, is that the bulk of Pathway to Employment services be delivered as direct services and, therefore, OPWDD does not intend to increase the number of hours for indirect service provision. Consequently, the regulations are being adopted as proposed.

Comment: A commenter expressed concern with the regulatory provision that defines travel without an individual present as an indirect service. The commenter stated that this would result in rapidly using up all of the 60 hours of indirect services that "were meant to be used in more constructive ways." The commenter stated that, since travel without an individual present is only billable if the intention is to deliver a valid Pathway to Employment service, then that service should define how travel time is classified. The commenter gave the following example: If the staff member travels alone to and from a meeting with the individual in his home and delivers a Pathway to Employment service then the travel aspect of the service should be considered a direct service. If the staff travels alone to and from a location where the individual is not present (i.e. clinician interview), then travel time should be considered an indirect service.

Another commenter stated that the new explanation of travel time in the regulations clearly identifies how and what can be billed for under this activity.

Response: The provision of travel as an allowable activity is an option, not a requirement. Providers should be strategic about how indirect hours are allocated to avoid exceeding the limit of hours, and to ensure that service delivery is effective, efficient and meets the needs of individuals receiving the service.

Comment: A commenter sought clarification in reference to the allowable activity in 635-10.4(h)(1)(ii)(j), "other activities, as authorized by OPWDD." The commenter asked if such activities can only be authorized at the Central Office level.

Response: Other activities as referenced in 635-10.4(h)(1)(ii)(j) are authorized by OPWDD's Central Office Employment Unit.

Comment: A commenter expressed concern with the regulatory provision that prohibits the provision of Pathway to Employment services in day training programs/sheltered workshops. The commenter contended that the addition of this limitation creates a number of questions and potential challenges to service providers who are attempting to transition individuals from sheltered workshops by way of participation in Pathway to Employment services. The commenter stated that it may be useful for Pathway to Employment staff who are beginning to support an individual currently working in a sheltered workshop, to observe the individual, identify current work skills and otherwise gain valuable information that can be used to help such individual develop career objectives and a pathway to achieving such. The commenter added that there are also Pathway to Employment eligible individuals who participate in a sheltered workshop that are not eligible for prevocational services as they have demonstrated an earning capacity of greater than 50 percent of the current Federal minimum wage or prevailing wage and that these individuals may be appropriate for Pathway to Employment services in an effort to help transition them out of the sheltered workshop or day training program. The commenter stated that indirect services of observation and assessment while the individual is in the sheltered workshop or day training program may be of significant benefit.

The commenter also requested clarification as to whether the prohibition applies to certified day training programs that do not pay a subminimum wage or have a Department of Labor issued subminimum wage certificate.

Another commenter recommended changing the language to read as follows ""Pathway to Employment certified providers shall not offer said services in a setting that is certified as day training/sheltered workshops."

Response: If the provider has non-certified space in the workshop, providers can utilize such space for observations and assessments. Otherwise, Pathway to Employment staff may observe and assess individuals in any services other than day training programs/sheltered workshops in order to obtain the information needed, and to observe how the individual interacts with others and participates in community life. Consequently, the regulation is being adopted as proposed.

Comment: A commenter sought clarification as to where or whom within OPWDD the required career vocational plan is to be submitted, and clarification as to whom and when the career vocational plan is to be submitted to the Adult Career and Continuing Education Services (ACCES-VR).

A commenter sought clarification on whether an ACCES-VR denial letter is required to be part of an individual's Pathway to Employment record prior to the start of Pathway to Employment services.

Response: The career vocational plan can be uploaded into OPWDD's CHOICES system. The plan should also be submitted to the respective ACCES-VR Regional Office Employment Liaison. An ACCES-VR denial letter is not required prior to the start of Pathway to Employment services.

Comment: A commenter sought clarification of the requirement that the provider retain a copy of the Letter of Agreement between OPWDD and the NYS Education Department. The commenter's interpretation is that the provision is not prescriptive in how the letter is retained, providers can either keep a single copy administratively in a general file or file a copy in the file of any individual who is receiving this service.

Response: The commenter's interpretation is correct that the regulatory provision is not prescriptive in how the letter is to be retained. A best practice would be to file the agreement with all records associated with delivery of the Pathway to Employment service.

Comment: A commenter stated that, while the proposed amendments offer greater service flexibility for providers, there are a number of areas within the regulations that remain too subjective and ambiguous. The commenter requested that OPWDD's ADM #2015-07 be updated and disseminated prior to June 1, 2016 to include details related to the regulatory amendments.

Response: OPWDD intends to issue revised administrative guidance that is reflective of the regulatory changes to the Pathway to Employment service in the near future.

Public Service Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Disposition of Tax Refunds and Other Related Matters

I.D. No. PSC-22-16-00013-P

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

Proposed Action: The Commission is considering a request by Orange & Rockland Utilities, Inc. proposing the disposition of certain property tax refunds.

Statutory authority: Public Service Law, section 113(2)

Subject: Disposition of tax refunds and other related matters.

Purpose: To consider the disposition of tax refunds and other related matters.

Public hearing(s) will be held at: 10:30 a.m., Aug. 3, 2016 and continuing as needed at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY (Evidentiary Hearing)*

*On occasion there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 16-M-0231.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request

must be addressed to the agency representative designated in the paragraph below.

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

Substance of proposed rule: The Public Service Commission is considering an April 20, 2016 Petition by Orange & Rockland Utilities, Inc. (Utility) for the disposition, pursuant under PSL Section 113(2), of a property tax refund that will be paid to the Utility pursuant to a settlement agreement that has resolved a series of lawsuits against the City of Middletown challenging the tax assessments made for certain Utility property in the City of Middletown. The petition seeks a reimbursement to the Utility of the costs it has incurred to achieve these refunds and, thereafter, a sharing of the net proceeds from the settlement between the Utility and its gas customers. 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-M-0231SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity and Waiver of 16 NYCRR Section 96.5(k)(3)

I.D. No. PSC-22-16-00010-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by CB Tarter Property LLC, to submeter electricity at 210 East 39th Street, New York, New York, and the request for a waiver of 16 NYCRR section 96.5(k)(3).

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: Notice of Intent to submeter electricity and waiver of 16 NYCRR section 96.5(k)(3).

Purpose: To consider the Notice of Intent to submeter electricity and waiver of 16 NYCRR section 96.5(k)(3).

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by CB Tarter Property LLC on April 20, 2016, to submeter electricity at 210 East 39th Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission is also considering Petitioner's request, filed May 10, 2016, for a waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent or more of the residents receive income-based housing assistance. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(16-E-0230SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for Rehearing of the Order Modifying Standardized Interconnection Requirements and Alternative Enforcement Mechanisms

I.D. No. PSC-22-16-00011-P

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

Proposed Action: The Commission is considering a Petition for Rehearing and Reconsideration of the Order Modifying Standardized Interconnection Requirements filed by SolarCity on April 18, 2016. The Commission is also considering alternative enforcement mechanisms.

Statutory authority: Public Service Law, sections 5(2), 22, 65(1), (2), (3), 66(1), (2), (3), (4), (5), (9), (12), (12-a), 66-c, 66-j and 66-l

Subject: Petition for rehearing of the Order Modifying Standardized Interconnection Requirements and alternative enforcement mechanisms.

Purpose: To ensure compliance with the Standardized Interconnection Requirements.

Substance of proposed rule: The Public Service Commission (Commission) is considering a Petition for Rehearing or Reconsideration (Petition), filed by SolarCity on April 18, 2016, requesting rehearing or reconsideration of the Commission's Order Modifying Standardized Interconnection Requirements (Order) issued on March 18, 2016 in Case 15-E-0557. The Petition requests that the Commission reconsider its decision in the Order inasmuch as it did not establish a dispute resolution process in which interconnecting distributed generators could enforce the Standardized Interconnection Requirements (SIR). 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.

(15-E-0557SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-22-16-00012-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by 20 West 53rd Street, L.L.C., to submeter electricity at 20 West 53 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: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of 20 West 53rd Street, L.L.C. to submeter electricity at 20 West 53 Street, New York, NY.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by 20 West 53rd Street, L.L.C. on July 28, 2015, to submeter electricity at 20 West 53 Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. 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.

(15-E-0441SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Request for Waiver of 16 NYCRR Section 96.5(k)(3) and Section 96.6(b)

I.D. No. PSC-22-16-00014-P

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

Proposed Action: The Public Service Commission is considering petitions filed by 605 West 42nd Owner LLC for waiver of the requirements of 16 NYCRR section 96.5(k)(3) and 16 NYCRR section 96.6(b).

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: Request for waiver of 16 NYCRR section 96.5(k)(3) and section 96.6(b).

Purpose: To consider the request for waiver of 16 NYCRR section 96.5(k)(3) and 16 NYCRR section 96.6(b).

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, petitions filed by 605 West 42nd Owner LLC (Owner) regarding the building located at 605 West 42nd Street, New York, New York. Owner is requesting waiver of proof that an energy audit has been conducted as required when 20 percent or more of the residents receive income based housing pursuant to 16 NYCRR § 96.5(k)(3). Owner also requests waiver of the requirement that the submetering system being utilized must allow for the termination of electric service to a particular unit in the event that termination of such service is consistent with the requirements of HEFPA pursuant to 16 NYCRR § 96.6(b). 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.

(15-E-0463SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-22-16-00015-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by Avalon Willoughby West, LLC, to submeter electricity at 100 Willoughby Street, Brooklyn, New York and 210 Duffield Street, Brooklyn, 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: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent to submeter electricity at 100 Willoughby Street and 210 Duffield Street, Brooklyn, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by Avalon Willoughby West, LLC on September 21, 2015, to submeter electricity at 100 Willoughby Street, Brooklyn, New York and 210 Duffield Street, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. 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.

(15-E-0559SP1)