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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-26-16-00003-P

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

Proposed Action: Amendment of Appendices 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Labor under the subheading "Administration - General," by increasing the number of positions of Special Assistant from 17 to 22; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor, by deleting therefrom the positions of øAssistant to Deputy Commissioner of Labor (4) and øAssistant to Executive Deputy Commissioner of Labor (1).

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

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

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-26-16-00004-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the New York State Bridge Authority, by adding thereto the position of Compliance Specialist 1 (1).

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

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

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was

previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-26-16-00005-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Statewide Financial System," by deleting therefrom the position of Manager Information Services and by adding thereto the position of Director Statewide Financial System.

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

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

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-26-16-00006-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by increasing the number of positions of øAssistant Counsel from 7 to 8.

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

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

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-26-16-00007-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by adding thereto the positions of DHSES Logistics Manager (1), DHSES Logistics Specialist (6) and DHSES Logistics Supervisor (3).

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

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

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was

previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-26-16-00008-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by adding thereto the position of øDirector Division Cost Management (1).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-26-16-00009-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health, by increasing the number of positions of Assistant Public Information Officer from 3 to 6.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-26-16-00010-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the New York State Teachers' Retirement System, by increasing the number of positions of TRS Investment Officer 3 (various parenthetics) from 11 to 14.

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

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

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

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Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously

printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-26-16-00011-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by increasing the number of positions of øSecretary 2 from 5 to 7.

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

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

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

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Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

Job Impact Statement

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Department of Economic Development

EMERGENCY
RULE MAKING

Empire Zones Reform

I.D. No. EDV-26-16-00001-E
Filing No. 536
Filing Date: 2016-06-08
Effective Date: 2016-06-08

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

Action taken: Amendment of Parts 10 and 11; renumbering and amendment of Parts 12 through 14 to Parts 13, 15 and 16; and addition of new Parts 12 and 14 to Title 5 NYCRR.

Statutory authority: General Municipal Law, art. 18-B, section 959; L. 2000, ch. 63; L. 2005, ch. 63; L. 2009, ch. 57

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate. It bears noting that General Municipal Law section 959(a), as amended by Chapter 57 of the Laws of 2009, expressly authorizes the Commissioner of Economic Development to adopt emergency regulations to govern the program.

Subject: Empire Zones reform.

Purpose: Allow department to continue implementing Zones reforms and adopt changes that would enhance program's strategic focus.

Substance of emergency rule: The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2000, Chapter 63 of the Laws of 2005, and Chapter 57 of the Laws of 2009. These laws, which authorize the empire zones program, were changed to make the program more effective and less costly through higher standards for entry into the program and for continued eligibility to remain in the program. Existing regulations fail to address these requirements and the existing regulations contain several outdated references. The emergency rule will correct these items.

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16 as amended), which governs the empire zones program, is amended as follows:

1. The emergency rule, tracking the requirements of Chapter 63 of the Laws of 2005, requires placement of zone acreage into "distinct and separate contiguous areas."

2. The emergency rule updates several outdated references, including: the name change of the program from Economic Development Zones to Empire Zones, the replacement of Standard Industrial Codes with the North American Industrial Codes, the renaming of census-tract zones as investment zones, the renaming of county-created zones as development zones, and the replacement of the Job Training Partnership Act (and private industry councils) with the Workforce Investment Act (and local workforce investment boards).

3. The emergency rule adds the statutory definition of "cost-benefit analysis" and provides for its use and applicability.

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant project) and conforms several existing regulatory definitions to statutory definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise ("QEZE") Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

5. The emergency rule requires additional statements to be included in an application for empire zone designation, including (i) a statement from the applicant and local economic development entities pertaining to the integration and cooperation of resources and services for the purpose of providing support for the zone administrator, and (ii) a statement from the applicant that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed zone.

6. The emergency rule amends the existing rule in a manner that allows for the designation of nearby lands in investment zones to exceed 320 acres, upon the determination by the Department of Economic Development that certain conditions have been satisfied.

7. The emergency rule provides a description of the elements to be included in a zone development plan and requires that the plan be resubmitted by the local zone administrative board as economic conditions change within the zone. Changes to the zone development plan must be approved by the Commissioner of Economic Development ("the Commissioner"). Also, the rule adds additional situations under which a business enterprise may be granted a shift resolution.

8. The emergency rule grants discretion to the Commissioner to determine the contents of an empire zone application form.

9. The emergency rule tracks the amended statute's deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

10. The emergency rule reflects statutory changes to the process to revise a zone's boundaries. The primary effect of this is to limit the number of boundary revisions to one per year.

11. The emergency rule describes the amended certification and decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

12. The emergency rule describes new eligibility standards for certification. The new factors which may be considered by the Commissioner when deciding whether to certify a firm is (i) whether a non-manufacturing applicant firm projects a benefit-cost ratio of at least 20:1 for the first three years of certification, (ii) whether a manufacturing applicant firm projects a benefit-cost ratio of at least 10:1 for the first three years of certification, and (iii) whether the business enterprise conforms with the zone development plan.

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

14. The emergency rule adds a new Part 12 implementing record-keeping requirements. Any firm choosing to participate in the empire zones program must maintain and have available, for a period of six years, all information related to the application and business annual reports.

15. The emergency rule clarifies the statutory requirement from Chapter 63 of the Laws of 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality.

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

17. The emergency rule clarifies the statutory requirement that certain defined "regionally significant" projects can be located outside of the distinct and separate contiguous areas. There are four categories of projects: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York, and (iv) a clean energy research and development enterprise. Other projects may be considered by the empire zone designation board. Only one category of projects, manufacturers projecting the creation of 50 or more net new jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

18. The emergency rule clarifies the status of community development projects as a result of the statutory reconfiguration of the zones.

19. The emergency rule clarifies the provisions under Chapter 63 of the Laws of 2005 that allow for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

20. The emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business development and there are other areas of the applicant municipality that can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

The full text of the emergency rule is available at www.empire.state.ny.us

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 5, 2016.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 625 Broadway, Albany NY 12245, (518) 292-5123, email: tregan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of a business enterprises as to eligibility of benefits under the program and the decertification of a business enterprise so as to revoke the certification of business enterprises for benefits under the program.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to statutory amendments and the remaining revisions either conform the regulations to existing statute or clarify administrative procedures of the program. These amendments further the Legislative goals and objectives of the Empire Zones program, particularly as they relate to regionally significant projects, the cost-benefit analysis, and the process for certification and decertification of business enterprises. The proposed amendments to the rule will facilitate the administration of this program in a more efficient, effective, and accountable manner.

NEEDS AND BENEFITS:

The emergency rule is required in order to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire Zones program, only voluntary participants.

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's administration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

This emergency rule does not impose any additional costs to the local governments for administration of the Empire Zones program.

PAPERWORK:

The emergency rule imposes new record-keeping requirements on businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years.

DUPLICATION:

The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes new record-keeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the Empire Zone program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

No professional services are likely to be needed by small and large businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

No initial capital costs are likely to be incurred by small and large businesses choosing to participate in the Empire Zones program. Annual compliance costs are estimated to be negligible for both small and larges businesses. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in full compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small businesses and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are eligible to participate in the program, participation by the municipalities and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule 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

Examinations for Teacher Certification

I.D. No. EDU-05-16-00003-E
Filing No. 578
Filing Date: 2016-06-14
Effective Date: 2016-06-18

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

Action taken: Amendment of section 80-1.5 of Title 8 NYCRR.

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

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

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

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 30-day public comment period for a revised rule making provided for in State Administrative Procedure Act (SAPA) is the June 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the June Regents meeting, is June 29, 2016, the date a Notice of Adoption would be published in the State Register. Since the emergency action taken at the April 2016 meeting will expire on June 17, 2016, emergency action is necessary for the preservation of the general welfare in order to ensure that teacher candidates who will be applying for certification from now until June 30, 2017 have timely and sufficient notice that, if they fail Part Two of the Multi-Subject Content Specialty Test (Grades 7-12) and receive a satisfactory score on Parts One and Three, they have the option to use the safety net in lieu of retaking Part Two of the examination to receive an initial certificate and to ensure that the emergency rule adopted at the January 2016 meeting and revised at the April 2016 meeting will remain in effect continuously until it can be adopted as a permanent rule.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the June 2016 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.

Subject: Examinations for Teacher Certification.

Purpose: Extension of the safety net for the multi-subject content specialty teacher certification examination.

Text of emergency rule: Paragraph (3) of Subdivision (c) of section 80-1.5 of the Regulations of the Commissioner of Education shall be amended, effective June 18, 2016, to read as follows:

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

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

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

(iii) A candidate who takes and fails to achieve a satisfactory level of performance on Part Two of the new Multi-Subject: Secondary Teachers Grade 7 - Grade 12 content specialty test, if required for the certificate area sought and he/she received a satisfactory level of performance on Parts One and Three of such test on or after September 1, 2014 through June 30, 2017, may, in lieu of retaking Part Two of such examination:

(a) present the Department with sufficient evidence of satisfactory completion of the mathematics tutorial approved by the Department prior to June 30, 2017; and

(b) submit an attestation on or before June 30, 2017, on a form prescribed by the Commissioner, attesting that the candidate has:

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

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

This notice is intended to serve 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-05-16-00003-EP, Issue of February 3, 2016. The emergency rule will expire August 12, 2016.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

Consistent with the intent of the safety nets that are currently in place for the Academic Literacy Skills Test (ALST), the Educating All Students Test (EAS), the edTPA and the other Content Specialty Tests, the Commissioner directed the Department to create a temporary safety net for those candidates who have taken and failed Part Two (the Mathematics portion) of the Multi-Subject: Secondary Teachers Grade 7 - Grade 12 Content Specialty Test.

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

Upon completion of the mathematics tutorial, candidates must then submit an attestation, attesting that they have completed at least one college mathematics course (3 semester hours) and received a grade of 3.0 or higher or the substantial equivalent in that course.

Following the 45-day public comment period, the Department received one comment from the New York State United Teachers on the proposed amendment.

The Department is also proposing an amendment to the current regulation to extend the safety net option for the MST 7-12 from June 30, 2016 to June 30, 2017 to be consistent with the safety net extensions for the other examinations.

4. COSTS:

Cost to the State: None.

Costs to local government: None.

Cost to private regulated parties: None.

Cost to regulating agency for implementation and continued administration of this rule: The State Education Department will use existing resources to implement the safety net.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

There are no additional paperwork requirements beyond those currently imposed; except that for candidates who take and fail Part Two of the multi-subject content specialty test (7-12) to be eligible for the safety net, the candidate may submit an attestation on a form prescribed by the Commissioner attesting that the candidate has demonstrated comparable mathematics coursework at the college/university.

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

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

Upon completion of the mathematics tutorial, candidates must then submit an attestation, attesting that they have completed at least one college mathematics course (3 semester hours) and received a grade of 3.0 or higher or the substantial equivalent in that course. The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

Consistent with the intent of the safety nets that are currently in place for the Academic Literacy Skills Test (ALST), the Educating All Students Test (EAS), the edTPA and the other Content Specialty Tests, the Commissioner directed the Department to create a temporary safety net for those candidates who have taken and failed Part Two (the Mathematics portion) of the Multi-Subject: Secondary Teachers Grade 7 - Grade 12 Content Specialty Test.

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

Upon completion of the mathematics tutorial, candidates must then submit an attestation, attesting that they have completed at least one college mathematics course (3 semester hours) and received a grade of 3.0 or higher or the substantial equivalent in that course.

Following the 45-day public comment period, the Department received one comment from the New York State United Teachers on the proposed amendment.

The Department is also proposing an amendment to the current regulation to extend the safety net option for the MST 7-12 from June 30, 2016 to June 30, 2017 to be consistent with the safety net extensions for the other examinations.

3. COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

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

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

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

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

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

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

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on February 3, 2016, the State Education Department (SED) received the following comments:

1. COMMENT:

The safety net requires completion of an online tutorial and an attestation from an academic official at a higher education institution. One commenter expressed concern that the attestation portion of the safety net is proving to be more difficult than the process discussed at the January 2016 Regents meeting.

Currently, the attestation form requires higher education officials to attest to the fact that "The teacher has a deep understanding of the Learning Standards for Mathematics and effectively connects the standards for mathematical practice with the standards for mathematical content to demonstrate a high level of mathematical proficiency and to provide highly effective mathematics instruction." This language is being interpreted by some college officials as requiring the candidate for the Students with Disabilities 7-12 Generalist certificate to possess a level of mathematical knowledge equal to a teacher who holds a math 7-12 certificate. The commenter has indicated that these certificate holders are employed as consultant teachers, resource room service providers, or integrated co-teachers. They do not deliver math content on their own. While we agree that they should have a foundation in math, the commenter indicates that the attestation requires a skill set that exceeds the knowledge the exam requires and therefore the intent of the safety net is negated. Instead, the commenter requests that the attestation be modified to require an academic official to attest to a candidate's ability to provide meaningful instructional assistance in math to students with disabilities in grades 7-12 that would be better aligned with the certificate title of students with disabilities 7-12 generalist.

DEPARTMENT RESPONSE:

The language used in the safety net attestation for Part Two: Mathematics of the Multi-Subject: Secondary Teachers (Grades 7-12) Content Specialty Test directly reflects the language in the framework of the Multi-Subject Test (see: http://www.nystce.nesinc.com/PDFs/NY__fld241__242__245__objs.pdf), which states that a teacher of students with disabilities shall have "a deep understanding of the New York State P-12 Common Core Learning Standards for Mathematics (NYCCLS) and effectively connects the standards for mathematical practice with the standards for mathematical content to demonstrate a high level of mathematical proficiency and to provide highly effective mathematics instruction." The mathematics competencies and performance expectations in the framework reflect the mathematics content knowledge and skills that are expected of a teacher who is seeking to support the teacher of record in an integrated classroom or teach students with disabilities in a self-contained classroom as either a co-teacher or a consultant teacher in Grades 7-12. Thus, the attestation is not requiring mathematical content knowledge beyond what is tested on Part Two: Mathematics of the Multi-Subject Test.

The framework for the Multi-Subject test was developed through the collaboration of NYSED representatives and content specialists, based on NYSED-designated and educator-developed standards. The framework was then reviewed by New York State educators and teacher educators from across New York State on the NYSTCE Bias Review Committee and Multi-Subject 7-12 Content Advisory Committee at a Framework Review Conference. In addition, a sample of over 200 educators and teacher educators from across New York State reviewed the test framework in a Content Validation Survey. Approximately 104 New York State educators also participated in a job analysis study that identified the critical teacher tasks to which the Content Advisory Committee linked the Multi-Subject 7-12 test framework.

EMERGENCY RULE MAKING

Career Development and Occupational Studies (CDOS) Graduation Pathway Option

I.D. No. EDU-14-16-00002-E

Filing No. 573

Filing Date: 2016-06-14

Effective Date: 2016-06-20

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

Action taken: Amendment of sections 100.5 and 100.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 305(1), (2), 4402(1)-(7) and 4403(3)

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

Specific reasons underlying the finding of necessity: The proposed amendment expands the Career Development and Occupational Studies (CDOS) graduation pathway option to all students who meet the requirements to earn a CDOS Commencement Credential, meet graduation course

and credit requirements, and pass four required Regents Exams. Currently, this option is only available to students with disabilities.

At the March 2016 Regents meeting, the proposed amendment was adopted as an emergency action, effective March 22, 2016. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on April 6, 2016.

The proposed amendment has now been adopted as a permanent rule at the June 13-14, 2016 Regents meeting. Pursuant to SAPA § 203(1), the earliest effective date of the proposed amendment, if adopted at the February meeting, would be June 29, 2016, the date a Notice of Adoption will be published in the State Register. However, the March emergency rule will expire on June 19, 2016, ninety days after filing the Notice of Emergency Adoption and Proposed Rule Making with the Department of State on March 22, 2016. A lapse in the rule could disrupt administration of the Career Development and Occupational Studies (CDOS) graduation pathway option to eligible students.

Emergency action is therefore necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the March 2016 Regents meeting remains continuously in effect until the effective date of the rule's permanent adoption.

Subject: Career development and occupational studies (CDOS) graduation pathway option.

Purpose: To establish a Career Development and Occupational Studies (CDOS) graduation pathway option for all students who meet the requirements to earn a CDOS Commencement Credential, meet graduation course and credit requirements, and pass four required Regents Exams.

Text of emergency rule: 1. Subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective June 20, 2016, as follows:

(a) General requirements for a Regents or a local high school diploma.

Except as provided in clauses (5)(i)(c), (e) and (f) of this subdivision, [paragraph] *paragraphs* (d)(6) *and (11)* and subdivision (g) of this section, the following general requirements shall apply with respect to a Regents or local high school diploma. Requirements for a diploma apply to students depending upon the year in which they first enter grade nine. A student who takes more than four years to earn a diploma is subject to the requirements that apply to the year that student first entered grade nine. Students who take less than four years to complete their diploma requirements are subject to the provisions of subdivision (e) of this section relating to accelerated graduation.

(1) . . .
(2) . . .
(3) . . .
(4) . . .

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

(a) . . .
(b) . . .
(c) . . .
(d) . . .
(e) . . .
(f) Requirements for pathway assessments:

(1) [In addition to the requirements of clauses (a), (b), (c), (d) and (e) of this subparagraph,] *Except as provided in paragraph (d)(11) of this section,* students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma pursuant to this section in June 2015 and thereafter[,] must *meet the requirements of clauses (a), (b), (c), (d) and (e) of this subparagraph and* also pass any one of the following assessments:

(i) . . .
(ii) . . .
(iii) . . .
(iv) . . .
(v) . . .
(vi) . . .
(ii) . . .
(iii) . . .
(iv) . . .
(v) . . .

(6) . . .
(7) . . .
(8) . . .

2. Subparagraph (iii) of paragraph (7) of subdivision (b) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective June 20, 2016, as follows:

(iii) Earning a Regents or local high school diploma shall be deemed to be equivalent to receipt of a high school diploma pursuant to Education Law, section 3202(1) and shall terminate a student's entitlement to a free public education pursuant to such statute. Earning a high school equivalency diploma [or], an Individualized Education Program diploma*,* or *either* a skills and achievement commencement credential *or a New York State career development and occupational studies commencement credential* as set forth in section 100.6 of this Part, shall not be deemed to be equivalent to receipt of a high school diploma pursuant to Education Law, section 3202(1) and shall not terminate a student's entitlement to a free public education pursuant to such statute.

3. A new paragraph (11) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is added, effective March 22, 2016, as follows:

(11) Career development and occupational studies pathway. Students who first enter grade nine in September 2012 and thereafter or who are otherwise eligible to receive a high school diploma pursuant to this section in June 2016 and thereafter may meet the diploma requirements described in this section by:

(i) completing the applicable credit requirements pursuant to this section; and

(ii) completing the requirements for the New York State career development and occupational studies commencement credential as provided in section 100.6(b) of this Part; and

(iii) passing four assessments, one in each of the four subject areas of English, mathematics, science and social studies (United States history and government or global history and geography), as set forth in clauses (a)(5)(i)(a)-(e) of this section;

4. Subdivision (b) of section 100.6 of the Regulations of the Commissioner of Education is amended, effective June 20, 2016, as follows:

(b) New York State career development and occupational studies commencement credential.

(1) Eligible students. (i) Beginning July 1, 2013 [and thereafter] *but prior to June 2016*, the board of education or trustees of a school district shall, and the principal of a nonpublic school may, issue a New York State career development and occupational studies commencement credential to a student with a disability who meets the requirements of paragraph [(1)] *(3)* of this subdivision to document [preparation] *readiness* for entry-level employment after high school, except for those students deemed eligible for a skills and achievement commencement credential pursuant to subdivision (a) of this section.

(ii) Beginning June 2016 and thereafter, the board of education or trustees of a school district shall, and the principal of a nonpublic school may, issue a New York State career development and occupational studies commencement credential to any student who meets the requirements of paragraph (3) of this subdivision to document readiness for entry-level employment after high school, except for those students with disabilities deemed eligible for a skills and achievement commencement credential pursuant to subdivision (a) of this section.

(2) Consistent with sections 100.2(q)(1) and 100.5 of this Part, the school district or nonpublic school shall ensure that the student has been provided with appropriate opportunities to earn a Regents or local high school diploma, including providing a student with meaningful access to participate and progress in the general curriculum to assist the student to meet the State's learning standards.

[(1)] *(3)* Except as provided in paragraphs [(2), (5) and (6)] *(4), (7) and (8)* of this subdivision, prior to awarding the career development and occupational studies commencement credential, the board of education or trustees of the school district, or the governing body of the nonpublic school, shall ensure that each of the following requirements have been met:

(i) the school district has evidence that the student has developed, annually reviewed and, as appropriate, revised a career plan to ensure the student is actively engaged in career exploration. Such plan shall include, but is not limited to, a statement of the student's self-identified career interests; career-related strengths and needs; career goals; and career and technical coursework and work-based learning experiences that the student plans to engage in to achieve those goals. School districts shall provide students with either a model form developed by the commissioner to document a student's career plan, or a locally-developed form that meets the requirements of this subdivision and, as appropriate, shall assist the student to develop his/her career plan. The student's career plan may not be limited to career-related activities provided by the school and may include activities to be provided by an entity other than the school; provided that nothing in this subdivision shall be deemed to require the school to provide the student with the specific activities identified in the career plan. A student's preferences and interests as identified in his/her career plan shall be reviewed annually and*, for a student with a disability,* considered in the development of the student's individualized education program pursuant to section 200.4(d)(2)(ix) of this Title. A copy of the student's career plan in effect during the school year in which the student exits high school shall be maintained in the student's permanent record;

(ii) . . .
(iii) . . .

[(2)] *(4)* Notwithstanding the provisions of paragraph [(1)] *(3)* of this subdivision, a board of education or trustees of the school district, or the governing body of the nonpublic school, may award the career development and occupational studies commencement credential to a student who has met the requirements for a nationally-recognized work-readiness credential, including but not limited to SkillsUSA, the National Work Readiness Credential, the National Career Readiness Certificate – (ACT) WorkKeys and the Comprehensive Adult Student Assessment Systems Workforce Skills Certification System.

[(3)] *(5)* The credential shall be issued at the same time the student receives his/her Regents or local high school diploma or, for a student [whose disability prevents the student from earning] *who is unable to meet the requirements for* a Regents or local diploma, any time after such student has attended school for at least 12 years, excluding kindergarten, or has received a substantially equivalent education elsewhere, or at the end of the school year in which a student attains the age of 21.

[(4)] *(6)*. . .

[(5)] *(7)* For students with disabilities who exit from high school prior to July 1, 2015, the district or nonpublic school may award the career development and occupational studies commencement credential to a student who has not met all of the requirements in subparagraph [(1)(ii)] *(3)(ii)* of this subdivision, provided that the school principal, in consultation with relevant faculty, has determined that the student has otherwise demonstrated knowledge and skills relating to the commencement level career development occupational studies learning standards.

[(6)] *(8)* For students [with disabilities] who transfer from another school district within the State or another state, the principal shall, after consultation with relevant faculty, evaluate the work-based learning experiences and coursework on the student's transcript or other records to determine if the student meets the requirements in subparagraph (ii) of paragraph [(1)] *(3)* of this subdivision.

[(7)] *(9)*. . .

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-14-16-00002-EP, Issue of April 6, 2016. The emergency rule will expire August 12, 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

STATUTORY AUTHORITY:

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

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

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

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

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

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of instruction.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy to establish a Career Development Occupational Studies (CDOS) graduation pathway option for all students who meet the requirements to earn the New York State (NYS) CDOS Commencement Credential, meet graduation course and credit requirements and pass four required Regents Exams.

NEEDS AND BENEFITS:

There is growing public interest in broadening the number of comparably rigorous pathways leading to a high school diploma to ensure that graduation pathways provide a broader group of students with sufficient opportunities to graduate with a regular diploma. These discussions have led to a comprehensive review of the college- and career-readiness of our students, units of study requirements, assessments of student learning, and support for broadening the criteria needed to earn a high school diploma without lowering the standard of academic excellence that is required. The proposed pathway would allow students to graduate with a regular diploma when they have demonstrated the State's standards for academic achievement in math, English, science and social studies and the State's standards for essential work-readiness knowledge and skills necessary for successful employment after high school.

The proposed amendment would amend:

1. sections 100.5(a), (b) and (d) to add that all students, beginning in June 2016 and thereafter, could graduate with a regular high school diploma if they complete the credit requirements; meet the requirements to earn the CDOS Commencement Credential; and pass four Regents assessments, one in each of the four discipline areas of math, English, science and social studies; and

2. section 100.6(b) to expand the opportunity to all students to earn the CDOS Commencement Credential, except students with severe disabilities who take the New York State Alternate Assessment and graduate from high school with the Skills and Achievement Commencement Credential.

COSTS:

(a) Costs to State government: none.

(b) Costs to local government: There may be costs associated with extending the population of students who can earn the Credential related to record keeping to ensure the student has met the career planning requirements, minimum hours for courses of study and work-based learning, achievement of the standards and to ensure that each student working to meet these requirements has a completed employability profile. These costs are anticipated to be minimal and capable of being absorbed by districts using existing staff and resources.

(c) Costs to private regulated parties: Except for approved private schools for students with disabilities, participation by nonpublic schools is voluntary. For those nonpublic schools that choose to participate, there may be costs associated with issuing students a career development and occupational studies commencement credential if nonpublic schools opt to develop their own forms, in lieu of using the Department's career plan and employability profile model forms. These costs are anticipated to be minimal and capable of being absorbed using existing staff and resources.

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

The proposed amendment does not impose any significant costs on the State, school districts, charter schools, registered nonpublic schools or the State Education Department. The amendment implements Regents policy to establish a CDOS graduation pathway option and expand the opportunity for students to exit with the CDOS Commencement Credential, which recognizes students' work readiness skills for post-school employment. In the long term, the proposed amendment is expected to be a cost-saving measure in that it will boost the graduation rate, allowing more students to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

LOCAL GOVERNMENT MANDATES:

The proposed amendment implements Regents policy to establish a CDOS graduation pathway option and expand the opportunity to all students to graduate with a regular high school diploma by meeting the requirements to demonstrate work-readiness skills through achievement of the CDOS Commencement Credential. The amendment would require school districts to issue a regular high school diploma to any student who meets the requirements to earn the CDOS Commencement Credential, meets graduation course and credit requirements, and passes four required Regents Exams. School districts are already required to provide students with disabilities with the opportunity to earn the CDOS Commencement Credential and there are a number of school districts and BOCES that currently offer technical education programs that would meet the proposed pathway requirements, and many students, including students without disabilities, already take Career and Technical Education (CTE) courses, and engage in work-related activities that would allow them to meet the credential's instructional requirements.

Districts would also be required to ensure that the transcript and permanent records of a student who earns this credential include notation of career and technical education coursework and work-based learning expe-

riences completed by the student and that students are provided with a copy of a form to complete his/her Career Plan. Further, for students who meet the minimum requirements for the CDOS credential, the proposed amendment would require school personnel to complete and maintain a work skills employability profile for the student during his/her last year of school. Currently, an employability profile is only required for students with disabilities working towards a CDOS commencement credential and students participating in an approved career and technical education program pursuant to section 100.5(d)(6).

PAPERWORK:

The proposed amendment will not require any additional paperwork beyond what is necessary to document attainment of the CDOS learning standards, completion of required instructional activities (CTE and/or work-based learning experiences) and employability skills, and to issue the certificate to award the credential to the student.

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

There are no applicable Federal standards.

COMPLIANCE SCHEDULE:

The CDOS graduation pathway option would apply beginning with students who first enter grade nine in September 2012 and thereafter, or who are otherwise eligible to receive a high school diploma in June 2016 or thereafter. Many students are already participating in required instructional activities (CTE and/or work-based learning experiences) and/or working toward a nationally-recognized work readiness credential to meet the requirements for the CDOS Commencement Credential. It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to implement Regents policy to establish a Career Development Occupational Studies (CDOS) graduation pathway option for students who meet the requirements to earn the New York State (NYS) CDOS Commencement Credential, meet graduation course and credit requirements and pass four required Regents Exams and to expand the opportunity to all students to earn the CDOS commencement credential.

The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements, and does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendment applies to each of the 689 public school districts in the State, and to charter schools and nonpublic schools that are authorized to issue regular high school diplomas with respect to State assessments and high school graduation and diploma requirements. At present, there are 70 charter schools authorized to issue Regents diplomas.

COMPLIANCE REQUIREMENTS:

The proposed amendment implements Regents policy to establish a CDOS graduation pathway option to allow students to graduate with a regular diploma when they have demonstrated the State's standards for academic achievement in math, English, science and social studies and the State's standards for essential work-readiness knowledge and skills necessary for successful employment after high school.

The proposed amendment would require school districts to issue a regular high school diploma to any student who meets the requirements to earn the CDOS Commencement Credential, meets graduation course and credit requirements, and passes four required Regents Exams.

Districts must also ensure that the transcript and permanent records of a student who earns this credential include notation of career and technical education coursework and work-based learning experiences completed by the student and that students are provided with a copy of a form to complete his/her Career Plan. Further, for students who meet the minimum requirements for the CDOS credential, the proposed amendment would require school personnel to complete and maintain a work skills employability profile for the student during his/her last year of school. Currently, an employability profile is only required for students with disabilities working towards a CDOS commencement credential and students participating in an approved career and technical education program pursuant to section 100.5(d)(6).

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

There may be costs associated with extending the population of students who can earn the Credential related to record keeping to ensure the student has met the career planning requirements, minimum hours for courses of study and work-based learning, achievement of the standards and to ensure that each student working to meet these requirements has a completed employability profile. These costs are anticipated to be minimal and capable of being absorbed by districts using existing staff and resources.

The amendment implements Regents policy to establish a CDOS graduation pathway option and expand the opportunity for students to exit with the CDOS Commencement Credential, which recognizes students' work readiness skills for post-school employment. In the long term, the proposed amendment is expected to be a cost-saving measure in that it will boost the graduation rate, allowing more students to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

ECONOMIC AND TECHNOLOGICAL FEASIBILTY:

The proposed amendment does not impose any additional technological requirements on school districts, charter schools or registered nonpublic schools high schools. Economic feasibility is addressed above under compliance costs.

MINIMIZING ADVERSE IMPACT:

The proposed amendment implements Regents policy to establish a CDOS graduation pathway option and expand the opportunity for all students to graduate with a regular high school diploma by meeting the requirements to demonstrate work-readiness skills through achievement of the CDOS Commencement Credential. The amendment would require school districts to issue a regular high school diploma to any student who meets the requirements to earn the CDOS Commencement Credential, meets graduation course and credit requirements, and passes four required Regents Exams. School districts are already required to provide students with disabilities with the opportunity to earn the CDOS Commencement Credential and there are a number of school districts and BOCES that currently offer technical education programs that would meet the proposed pathway requirements, and many students, including students without disabilities, already take CTE courses, and engage in work-related activities that would allow them to meet the credential's instructional requirements.

Districts would also be required to ensure that the transcript and permanent records of a student who earns this credential include notation of career and technical education coursework and work-based learning experiences completed by the student and that students are provided with a copy of a form to complete his/her Career Plan. Further, for students who meet the minimum requirements for the CDOS credential, the proposed amendment would require school personnel to complete and maintain a work skills employability profile for the student during his/her last year of school. Currently, an employability profile is only required for students with disabilities working towards a CDOS commencement credential and students participating in an approved career and technical education program pursuant to section 100.5(d)(6).

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 and to charter schools.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 689 public school districts in the State, charter schools, and registered nonpublic schools in the State, to the extent that they offer instruction in the high school grades, including those located in the 44 rural counties with less than 200,000 in-

habitants and the 71 towns in urban counties with a population density of 150 per square mile or less. At present, there is one charter school located in a rural area that is authorized to issue Regents diplomas.

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

The proposed amendment implements Regents policy to establish a CDOS graduation pathway option and expand the opportunity for all students to graduate with a regular high school diploma by meeting the requirements to demonstrate work-readiness skills through achievement of the CDOS Commencement Credential. The amendment would require school districts to issue a regular high school diploma to any student who meets the requirements to earn the CDOS Commencement Credential, meets graduation course and credit requirements, and passes four required Regents Exams.

Districts would also be required to ensure that the transcript and permanent records of a student who earns this credential include notation of career and technical education coursework and work-based learning experiences completed by the student and that students are provided with a copy of a form to complete his/her Career Plan. Further, for students who meet the minimum requirements for the CDOS credential, the proposed amendment would require school personnel to complete and maintain a work skills employability profile for the student during his/her last year of school. Currently, an employability profile is only required for students with disabilities working towards a CDOS commencement credential and students participating in an approved career and technical education program pursuant to section 100.5(d)(6).

3. COMPLIANCE COSTS:

There may be costs associated with extending the population of students who can earn the Credential related to record keeping to ensure the student has met the career planning requirements, minimum hours for courses of study and work-based learning, achievement of the standards and to ensure that each student working to meet these requirements has a completed employability profile.

These costs are anticipated to be minimal and capable of being absorbed by districts using existing staff and resources.

The proposed amendment implements Regents policy to establish a CDOS graduation pathway option and expand the opportunity for all students to graduate with a regular high school diploma by meeting the requirements to demonstrate work-readiness skills through achievement of the CDOS Commencement Credential. In the long term, the proposed amendment is expected to be a cost saving measure in that it will boost the graduation rate, allowing more students to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements Regents policy to establish a CDOS graduation pathway option and expand the opportunity for all students to graduate with a regular high school diploma by meeting the requirements to demonstrate work-readiness skills through achievement of the CDOS Commencement Credential. The amendment would require school districts to issue a regular high school diploma to any student who meets the requirements to earn the CDOS Commencement Credential, meets graduation course and credit requirements, and passes four required Regents Exams. School districts are already required to provide students with disabilities with the opportunity to earn the CDOS Commencement Credential and there are a number of school districts and BOCES that currently offer technical education programs that would meet the proposed pathway requirements, and many students, including students without disabilities, already take CTE courses, and engage in work-related activities that would allow them to meet the credential's instructional requirements.

Districts would also be required to ensure that the transcript and permanent records of a student who earns this credential include notation of career and technical education coursework and work-based learning experiences completed by the student and that students are provided with a copy of a form to complete his/her Career Plan. Further, for students who meet the minimum requirements for the CDOS credential, the proposed amendment would require school personnel to complete and maintain a work skills employability profile for the student during his/her last year of school. Currently, an employability profile is only required for students with disabilities working towards a CDOS commencement credential and students participating in an approved career and technical education program pursuant to section 100.5(d)(6).

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

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment is necessary to implement Regents policy to establish a Career Development Occupational Studies (CDOS) graduation pathway option for all students who meet the requirements to earn the New York State (NYS) CDOS Commencement Credential, meet graduation course and credit requirements and pass four required Regents Exams and to expand the opportunity to all students to earn the CDOS commencement credential.

The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements and will not have a substantial adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact, or a positive impact, on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on April 6, 2016, the State Education Department (SED) received the following comments on the proposed amendment.

1. COMMENT:

Many commenters supported Career Development Occupational Studies (CDOS) pathway as additional graduation pathway. Students are diverse and diploma pathways should be too. CDOS pathway will: prepare students to be college/career ready; increase opportunity for students to graduate/graduation rates; allow students to continue Career and Technical Education (CTE) pathway without being limited by traditional graduation pathway; recognize students for work-based learning (WBL); provide valuable work-readiness credential; help increase students' skill levels and work-based practices; allow students to participate in WBL opportunities that build on strengths, interests and preferences; provide increased flexibility to meet graduation requirements (e.g., substitute credential for Global or US History Regents exams) while holding students to high standards; help students gain meaningful education; and put students in strong position to get jobs.

DEPARTMENT RESPONSE:

Comments supportive; no response necessary.

2. COMMENT:

Support expanding CDOS credential to all students. Districts will be more committed to developing robust coursework and WBL experiences and not have separate courses for students with disabilities. Important to place emphasis on CDOS; all students can benefit from WBL. Proposal gives general education students opportunity to develop entry-level employment skills. Limiting credential to students with disabilities and documenting credential on transcript unfairly stigmatized students and forced disclosure of disability to employers.

DEPARTMENT RESPONSE:

Comments supportive; no response necessary.

3. COMMENT:

CDOS pathway: lacks sequential/focused coursework and does not provide foundation to fully prepare students to be college/career ready and enter workforce; requires minimal unrelated coursework and limited WBL and career guidance; 216 hours of WBL without specific instruction in CTE coursework is insufficient to ensure career readiness; has potential to affect expansion and improvement of original five pathways by allowing districts to offer less rigorous pathway; may result in fewer students participating in more rigorous pathways; requires no measure of student achievement and conflicts with time and money spent ensuring 4+1 pathway exams were comparably rigorous to Regents exams; requires no evaluation of WBL experiences; requires no career programming; and does not address needed financial management skills. Pathway must have

defined coursework and WBL (216 hours of both CTE coursework and WBL) aligned with students' interests to strengthen work-readiness knowledge and skills.

DEPARTMENT RESPONSE:

We do not agree the CDOS pathway is less rigorous. Pathway allows students to earn a diploma when they have demonstrated State's standards for academic achievement in math, English, science, social studies, and for essential work-readiness knowledge and skills necessary for successful employment. While not requiring 5th assessment, pathway is comparably rigorous because it is based upon successful completion of instruction and educational experiences that prepare students to meet commencement-level CDOS Learning Standards and demonstrate work-readiness knowledge and skills. In addition to meeting CDOS credential requirements, students must earn required course credits and pass four Regents exams, one in each of four discipline areas.

4. COMMENT:

Change CDOS credential to diploma.

DEPARTMENT RESPONSE:

Standards for a diploma must be comparably rigorous to assessment pathways and represent readiness for employment and/or postsecondary education. Requirements for CDOS credential only relate to minimum standards necessary for students to demonstrate entry-level work-readiness skills.

5. COMMENT:

Current WBL opportunities may be limited and placements will quickly reach capacity; affecting schools' ability to offer range of experiences for students with disabilities who may require additional supports/accommodations. Concerned how students will be selected to participate in limited WBL experiences. Opportunities planned for students with disabilities may be reduced as proposal does not indicate that students with disabilities must be afforded equal opportunity for placements.

DEPARTMENT RESPONSE:

Schools must ensure that all students, including students with disabilities, have meaningful access to CTE courses and WBL experiences necessary to earn CDOS credential.

6. COMMENT:

Support CDOS pathway as dual exit criteria, not as graduation option for general education students. Exiting students without a diploma limits employment and post-secondary education opportunities.

DEPARTMENT RESPONSE:

Districts remain responsible for ensuring students are provided appropriate opportunities to earn a diploma. We believe the proposal will expand these opportunities. Although the credential could be a student's only exiting credential, we expect this number will be small. Credential documents student attainment of CDOS learning standards and preparation for entry-level employment; many entry-level positions do not require a diploma.

7. COMMENT:

Work-readiness exams to earn credential (Option 2) is test substitution and does not ensure students received instruction to build workforce skill and knowledge.

DEPARTMENT RESPONSE:

Although districts may allow students to earn CDOS credential by meeting requirements of a nationally recognized work readiness credential, this should not be the only option available. Schools are expected to prepare students for Option 2 assessments. All four credentials offer suggested resources and/or recommend comprehensive curriculum to assist schools in preparing students.

8. COMMENT:

CDOS pathway does not ensure rigor of WBL placement. Recommend WBL be SED approved/registered programs and supervised by NYS certified WBL coordinator, who is knowledgeable of Labor laws and operates under SED's guidelines, to increase quality of WBL experience; prevent districts from accepting unsupervised work experience hours; ensure safe work environments; and add rigor and relevance to pathway. Certified teacher required for all other programs; require same for WBL component of CDOS pathway.

DEPARTMENT RESPONSE:

Individuals providing WBL experiences through SED registered programs must, depending upon type of program, be certified WBL coordinators. Although those supervising locally approved community-based work programs do not require certification, SED recommends certification.

9. COMMENT:

To ensure CDOS pathway rigor and serve as alternative to Regents exam, require both Option 1 (i.e.,develop career plan; achieve CDOS learning standards 1, 2 and 3a; complete 216 hours of CTE coursework and/or WBL; and employability profile and Option 2 (i.e., nationally recognized work-readiness credential) plus additional performance-based assessment using CDOS standards and range of strategies that provides learners interactive role and incorporates WBL into CDOS pathway.

DEPARTMENT RESPONSE:

SED declines to make proposed changes. CDOS pathway was intended to expand the opportunities for students to earn a regular high school diploma while ensuring standards for a diploma are comparably rigorous.

10. COMMENT:

Better define difference between CTE and CDOS pathway, or perception will be CDOS is lesser CTE pathway.

DEPARTMENT RESPONSE:

CTE pathway ensures students meet CDOS learning standard 3b-Career Majors (students choosing a career major acquire career-specific technical knowledge/skills necessary to progress toward gainful employment, career advancement, and postsecondary success) and pass corresponding technical assessment. CDOS pathway does not require students to meet CDOS learning standard 3b.

11. COMMENT:

Concerned districts will certify afterschool jobs lacking adult support or relevant coursework as WBL. Backlash from unsupported/poorly supported experiences could be immense (e.g., students getting hurt/not performing adequately and alienating businesses willing to participate).

DEPARTMENT RESPONSE:

Independent employment outside of school cannot count toward WBL for credential. WBL must be consistent with SED guidelines, including safety instruction, and under district's supervision.

12. COMMENT:

Proposal should be retroactive to class of 2015.

DEPARTMENT RESPONSE:

Law prohibits adoption of regulations that impose retroactive policy. Under Education Law, students continue to be eligible for a free public education until end of the school year in which they turn age 21 or until receipt of a diploma. Any age-eligible student who has not earned a diploma may re-enroll in school and utilize CDOS pathway to meet diploma requirements.

13. COMMENT:

Modify CDOS and other pathways using program of study to allow students to work towards CDOS credential within existing five pathways and build upon skill, knowledge and competence in career pathway framework (i.e., 15/7 proposal)). This model includes required and elective focused coursework, beginning in middle school, to pursue career interests, participate in WBL and achieve CDOS learning standards. CDOS pathway criteria, as incorporated into the five pathways, could be used as local diploma safety net for students not passing fifth exam.

Review impact of CDOS pathway after 2016-2017 schoolyear and make necessary adjustments to ensure rigor and access.

DEPARTMENT RESPONSE:

SED will take consider these recommendations when considering future policy changes.

14. COMMENT:

Department provided no projected number of students using CDOS pathway.

DEPARTMENT RESPONSE:

Number of students who will use CDOS pathway cannot be projected as students may use any pathway option to meet diploma requirements.

15. COMMENT:

Pathway does not mandate prescribed coursework in career exploration; required coursework is purely academic.

DEPARTMENT RESPONSE:

To earn CDOS credential, district must document students have met commencement-level CDOS learning standard 1 (Career Development): Students will be knowledgeable about world of work, explore career options, and relate personal skills, aptitudes, and abilities to future career decisions. Although CDOS pathway does not require career exploration coursework, WBL experiences must relate to career awareness, exploration and/or preparation. Students may also complete CTE coursework, combined with WBL, to meet credential requirements.

16. COMMENT:

Clarify if evidence is required for each commencement-level CDOS indicator and how many sample tasks students must successfully complete to determine achievement of standards. Regents exams and SED approved assessments have specific scores. Award point value to sample tasks to determine achievement of CDOS learning standards.

DEPARTMENT RESPONSE:

Evidence is required for all performance indicators within a standard. It is not necessary for students to complete all sample tasks to demonstrate attainment of each commencement-level CDOS learning standard. Number of sample tasks students must successfully complete is a local decision.

17. COMMENT:

Inconsistent implementation of minimum 216 hours of CTE coursework and/or WBL experiences. Clarify if credential requires two credits of CTE and WBL or if 216 hours can be WBL only.

DEPARTMENT RESPONSE:

Students must successfully complete not less than equivalent of two units of study (216 hours) in either CTE courses and/or WBL (must include minimum of 54 hours of school supervised WBL). Students may complete all 216 hours through WBL. WBL experiences may, but are not required to, be completed in conjunction with CTE course(s).

18. COMMENT:

Concerned how credential will be awarded with fidelity and intended purpose of readiness for entry-level employment, and as comparably rigorous pathway, for students who successfully complete CDOS learning standards but receive mostly "unsatisfactory"/"needs improvement" on employability profile.

DEPARTMENT RESPONSE:

Schools must have evidence that students have satisfactorily completed credential requirements, including CTE and/or WBL hours as documented on employability profile. To award credential, principals must determine, based upon all requirements, whether students demonstrate entry-level work-readiness skills.

19. COMMENT:

Provides limited relief for students who struggle to demonstrate knowledge/skills on high-stakes standardized exams. Requirements still too challenging. Step away from one-size-fits-all graduation model by changing number of required exiting exams (i.e., one English, Math and Science Regents with other exams optional for honors or advanced Regents diploma) and developing performance-based assessments in lieu of Regents exams. Need sweeping changes so students unable to pass Regents exams may earn a diploma. Continue discussion to further extend diploma options. Bring back local diploma. Need more vocational credentials.

DEPARTMENT RESPONSE:

Regents continue to discuss multiple pathways to a diploma and alternative ways to assess students' proficiency toward State's learning standards for purposes of graduation with a regular diploma.

20. COMMENT:

Recommend SED publicize CDOS credential to employers.

DEPARTMENT RESPONSE:

SED met with many constituents in developing policy framework and documentation requirements for credential. Informational materials were widely disseminated to businesses statewide. SED will continue to provide further public awareness information.

21. COMMENT:

Clarify if General Educational Development (GED) and Test Assessing Secondary Completion (TASC) are equivalent to high school diploma and whether students under 21 earning these can return to school for a Regents or local diploma.

DEPARTMENT RESPONSE:

TASC, replaced GED in 2014 and is the test used in NYS for earning high school equivalency diploma (HSE), which is not a regular high school diploma. Students earning HSE diploma are entitled to remain in school until age 21 or receipt of Regents or local high school diploma.

22. COMMENT:

Content of proposal in NYS Register was confusing. Question how individuals are supposed to keep up with Regents decisions.

DEPARTMENT RESPONSE:

SED is required to post all proposed regulatory changes in NYS Register in prescribed format. Information on Regents' decisions is available at http://www.regents.nysed.gov/.

EMERGENCY RULE MAKING

Appeals Process on Regents Exams Passing Score

I.D. No. EDU-14-16-00003-E

Filing No. 576

Filing Date: 2016-06-14

Effective Date: 2016-06-20

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

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

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

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement revisions to policy adopted by the Board of Regents to expand by two additional points the existing eligible score band for an appeal of Regents examinations passing scores. Under the proposed amendment, students could appeal scores of 60-64 (expanded from 62-64) on up to two Regents examinations. Students who are granted one appeal by their local superintendent would then earn a Regents diploma. Students who are granted two appeals would earn a local diploma. In addition, the proposed amendment would eliminate the requirement that in order to be eligible to appeal students must meet a minimum attendance requirement of 95%, exclusive of excused absences, in the year they last took the examination under appeal.

At the March 2016 Regents meeting, the proposed amendment was adopted as an emergency action, effective March 22, 2016. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on April 6, 2016.

The proposed amendment has now been adopted as a permanent rule at the June 13-14, 2016 Regents meeting. Pursuant to SAPA § 203(1), the earliest effective date of the proposed amendment, if adopted at the February meeting, would be June 29, 2016, the date a Notice of Adoption will be published in the State Register. However, the March emergency rule will expire on June 19, 2016, ninety days after filing the Notice of Emergency Adoption and Proposed Rule Making with the Department of State on March 22, 2016. A lapse in the rule could disrupt administration of the process for certain eligible students to appeal Regents examinations passing scores pursuant to the rule's provisions.

Emergency action is therefore necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the March 2016 Regents meeting remains continuously in effect until the effective date of the rule's permanent adoption.

Subject: Appeals process on Regents exams passing score.

Purpose: To expand by two additional points the eligible score band for the appeal process on Regents examinations passing scores and to eliminate the minimum attendance eligibility requirement for such appeals.

Text of emergency rule: Paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective June 20, 2016, as follows:

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

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

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

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

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

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

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

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

(b) A student who first enters school in the United States (the 50 States and the District of Columbia) in grade 9, 10, 11 or 12 and is otherwise eligible to graduate in January 2015 or thereafter, is identified as an English Language Learner pursuant to Part 154 of this Title, and fails, after at least two attempts, to attain a score of 65 or above on the required Regents examination in English language arts for graduation, shall be given an opportunity to appeal such score in accordance with the provisions of this paragraph, provided that no such student may appeal his or her score on more than two of the five required Regents examinations and provided further that the student:

(1) . . .

(2) . . .

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

[(4)] *(3)*. . .
[(5)] *(4)*. . .

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

(1) . . .

(2) has met the criteria specified in subclauses [(2) - (5)] *(2) – (4)* of clause (a) of this subparagraph.

Notwithstanding the provisions of this clause, a student with a disability who makes use of the compensatory option in clause (b)(7)(vi)(c) of this section to obtain a local diploma may not also appeal a score below 55 on the English language arts or mathematics Regents examinations pursuant to this clause.

(ii) . . .
(iii) . . .
(iv) . . .
(v) . . .
(vi) . . .

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-14-16-00003-EP, Issue of April 6, 2016. The emergency rule will expire August 12, 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

STATUTORY AUTHORITY:

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

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

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

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

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

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3204(3) provides for required courses of study in the public schools and authorizes the State education department to alter the subjects of required instruction.

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

Pursuant to the appeal process set forth in Commissioner's Regulation § 100.5(d)(7), students may appeal scores of 62-64 on up to two required Regents examinations, provided they meet the following criteria.

Students must:

1. Have taken the Regents examination under appeal at least two times;

2. Present evidence that the student has taken advantage of academic help provided by the school in the subject tested by the Regents Examination under appeal;

3. Have an attendance rate of 95 percent (except for excused absences) for the school year during which the student last took the Regents examination under appeal;

4. Have a course average in the subject under appeal (as evidenced in the official transcript that records grades achieved by the student in each quarter of the school year) that meets or exceeds the required passing grade by the school; and

5. Be recommended for an exemption to the graduation requirement by the student's teacher or Department chairperson in the subject of the Regents examination under appeal.

In January 2015, the Board of Regents amended § 100.5(d)(7) to extend the appeal process to allow eligible English language learners to appeal scores of 55-61 on the English Language Arts Regents Examination. In December 2015, the Board amended the regulation to extend the appeal provision to students with disabilities who were seeking the local diploma through the existing safety net options. These students are able to appeal scores of between 52 and 54 on up to two Regents examinations and earn the local diploma.

Under the proposed amendment, students could appeal scores of 60-64 (expanded from 62-64) on up to two Regents examinations. Students who are granted one appeal by their local superintendent would then earn a Regents diploma. Students who are granted two appeals would earn a local diploma.

In addition, the proposed amendment would eliminate the requirement that in order to be eligible to appeal students must meet a minimum attendance requirement of 95%, exclusive of excused absences, in the year they last took the examination under appeal. The attendance requirement is problematic for a number of reasons. The rate required exceeds the statewide average attendance rate. In addition a student's ability to provide an excuse for an absence may be dependent upon circumstances that are not within the student's control. Finally, a student's attendance in the year they last took the test may not be appropriate or applicable. Often students retake examinations multiple times in an attempt to meet diploma requirements. These attempts can be made long after a student has met course requirements and is no longer attending school. Often a student may be returning to school for the sole purpose of attempting to pass the examination, so class attendance cannot be calculated in the year they last took the exam. No student may submit an appeal unless they have passed the course for which the appeal is being sought. If the student's attendance is adequate to meet course expectations and ultimately pass the course, the appeal should be considered.

COSTS:

(a) Costs to State government: None.

(b) Costs to local government: There may be additional costs to school districts to process a limited number of additional appeals from students who score 60 or 61 on up to two required Regents examinations. Such costs are expected to be minimal and capable of being absorbed using existing district staff and resources.

(c) Costs to private regulated parties: None.

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

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon school districts. An appeals process and criteria are already in place for students who score 62-64 on two Regents exams, and the proposed amendment merely expands by two additional points the existing eligible score band for an appeal. Existing diploma requirements allow students to appeal scores of 62-64 on up to two required Regents examinations. Under the proposed amendment, students could appeal scores of 60-64 (rather than 62-64) on up to two Regents examinations. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals.

Existing diploma requirements allow students to appeal scores of 62-64 on up to two required Regents examinations. Under the proposed amendment, students could appeal scores of 60-64 (rather than 62-64) on up to two Regents examinations.

PAPERWORK:

The proposed amendment will not require any additional paperwork beyond what is necessary to process a limited number of additional appeals from students who score 60 or 61 on up to two required Regents examinations. Appeals under the expanded eligibility scores would be subject to the existing requirement in section 100.5(d)(7) that each school keep a record of all appeals received and granted and report this information to Department on a form prescribed by the Commissioner. All school records relating to appeals of scores shall be made available for inspection by the Department.

DUPLICATION:
The proposed amendment does not duplicate existing State or federal regulations.
ALTERNATIVES:
There were no significant alternatives and none were considered. The proposed amendment is necessary to implement policy enacted by the Board of Regents relating to the State learning standards, State assessments and graduation and diploma requirements. The proposed amendment merely expands by two additional points the existing eligible score band for an appeal of Regents examinations passing scores.
FEDERAL STANDARDS:
There are no related federal standards.
COMPLIANCE SCHEDULE:
It is anticipated that schools and school districts will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:
The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements, and merely expands by two additional points the existing eligible score band for an appeal of Regents examinations passing scores. Existing diploma requirements allow students to appeal scores of 62-64 on up to two required Regents examinations. Under the proposed amendment, students could appeal scores of 60-64 (rather than 62-64) on up to two Regents examinations.
The proposed amendment does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.
Local Governments:
EFFECT OF RULE:
The proposed amendment applies to each of the 689 public school districts in the State.
COMPLIANCE REQUIREMENTS:
The proposed amendment does not impose any additional compliance requirements on local governments. An appeals process and criteria are already in place for students who score 62-64 on two Regents exams, and the proposed amendment merely expands by two additional points the existing eligible score band for an appeal. Existing diploma requirements allow students to appeal scores of 62-64 on up to two required Regents examinations. Under the proposed amendment, students could appeal scores of 60-64 (rather than 62-64) on up to two Regents examinations. In addition, the proposed amendment would eliminate the requirement that in order to be eligible to appeal students must meet a minimum attendance requirement of 95%, exclusive of excused absences, in the year they last took the examination under appeal. Newly qualifying students under the expanded criteria would merely go through the existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals.
PROFESSIONAL SERVICES:
The proposed amendment does not impose any additional professional service requirements on local governments.
COMPLIANCE COSTS:
There may be additional costs to school districts to process a limited number of additional appeals from students who score 60 or 61 on up to two required Regents examinations. Such costs are expected to be minimal and capable of being absorbed using existing district staff and resources.
ECONOMIC AND TECHNOLOGICAL FEASIBILTY:
The proposed amendment does not impose any additional technological requirements on school districts. Economic feasibility is addressed above under compliance costs.
MINIMIZE ADVERSE IMPACT:
The proposed amendment is necessary to implement Regents policy relating to State learning standards, State assessments and graduation and diploma requirements. The proposed amendment does not impose any additional compliance requirements or significant costs upon school districts or BOCES. An appeals process and criteria are already in place for students who score 62-64 on two Regents exams, and the proposed amendment merely expands by two additional points the existing eligible score band for an appeal of Regents examinations passing scores. Under the proposed amendment, students could appeal scores of 60-64 (rather than 62-64) on up to two Regents examinations. In addition, the proposed amendment would eliminate the requirement that in order to be eligible to appeal students must meet a minimum attendance requirement of 95%, exclusive of excused absences, in the year they last took the examination under appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals.
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 amendment applies to all school districts and boards of cooperative educational services (BOCES) in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.
2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:
The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on school districts and BOCES located in rural areas. An appeals process and criteria are already in place for students who score 62-64 on two Regents exams, and the proposed amendment merely expands by two additional points the existing eligible score band for an appeal. Existing diploma requirements allow students to appeal scores of 62-64 on up to two required Regents examinations. Under the proposed amendment, students could appeal scores of 60-64 (rather than 62-64) on up to two Regents examinations. In addition, the proposed amendment would eliminate the requirement that in order to be eligible to appeal students must meet a minimum attendance requirement of 95%, exclusive of excused absences, in the year they last took the examination under appeal. Newly qualifying students under the expanded criteria would merely go through the existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals. The proposed amendment does not impose any additional professional service requirements on local governments.
3. COMPLIANCE COSTS:
There may be additional costs to school districts to process a limited number of additional appeals from students who score 60 or 61 on up to two required Regents examinations. Such costs are expected to be minimal and capable of being absorbed using existing district staff and resources.
4. MINIMIZING ADVERSE IMPACT:
The proposed amendment is necessary to implement Regents policy relating to State learning standards, State assessments and graduation and diploma requirements. The proposed amendment does not impose any additional compliance requirements or significant costs upon school districts or BOCES. An appeals process and criteria are already in place for students who score 62-64 on two Regents exams, and the proposed amendment merely expands by two additional points the existing eligible score band for an appeal of Regents examinations passing scores. Under the proposed amendment, students could appeal scores of 60-64 (rather than 62-64) on up to two Regents examinations. In addition, the proposed amendment would eliminate the requirement that in order to be eligible to appeal students must meet a minimum attendance requirement of 95%, exclusive of excused absences, in the year they last took the examination under appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals.
The proposed amendment is necessary to implement Regents policy relating to State learning standards, State assessments and graduation and diploma requirements. Because this policy is applicable throughout the State, it was not possible to provide for a lesser standard or an exemption for school districts and BOCES in rural areas.
5. RURAL AREA PARTICIPATION:
Comments on the proposed rule were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment merely expands by two additional points the existing eligible score band for an appeal of Regents examinations passing scores and does not impose any additional costs on the State, school districts, students or the State Education Department. Existing diploma requirements allow students to appeal scores of 62-64 on up to two required Regents examinations. Under the proposed amendment, students could appeal scores of 60-64 (rather than 62-64) on up to two Regents examinations.
The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements and will not have a substantial adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact, or a positive impact, on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Ac-

cordingly, 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 April 6, 2016, the State Education Department received comments on the proposed amendment. A summary of comments and the Department's responses follows.

1. COMMENT:

A commenter supports the proposed regulation expanding the score band on the appeal from 62-64 to 60-64, stating, "…the amendment allows students with test anxiety greater leeway and gives them the ability to succeed." Also states, "…there should be some minimal attendance requirement, i.e. 75%, to require responsibility from the student".

DEPARTMENT RESPONSE:

To the extent the comments are supportive, no response is necessary. However, to the extent the commenter seeks a minimum attendance requirement to require responsibility from the student, the Department believes that the proposed amendment already provides significant flexibility to the district by allowing the local appeal committee the discretion to recommend approval or denial of an appeal to the district superintendent.

2. COMMENT:

The commenter supports expanding the score band for a Regents exam appeal from 62 to 60 and supports the elimination of the minimum attendance requirement.

> "We support expanding the score band for a Regents exam appeal from 62 to 60. We also support the elimination of the minimum attendance requirement. Multilingual Learners often struggle to demonstrate what they know and can do on standardized tests due to their developing English language skills. In addition, some older MLLs who have completed all of their coursework and are attempting to pass one or more Regents exams are often unable to meet the minimum attendance requirement. Some Multilingual Learners may also struggle to meet this requirement due to immigration court appearances and other situations beyond their control."

The commenter recommends the following modifications to existing rules:

- Reduce the number of times a student must fail a Regents exam in order to be eligible for an appeal. Requiring students to attempt the exam twice causes students and schools to spend time and resources on test prep when they could be engaged in learning and mastering new material. Students who feel discouraged after their first attempt may also become disengaged from school, which contributes to higher dropout rates.
- Allow students to appeal all Regents exams. Providing students with the opportunity to appeal all of the Regents exams will help to ensure that these exams do not pose an obstacle to graduation and postsecondary opportunities for students who have mastered State standards, as demonstrated by their coursework.

> "The proposed changes to the requirements for a Regents exam appeal will provide increased flexibility within the current assessment system. In order to ensure that all students are given a fair opportunity to demonstrate their mastery of State standards, we encourage the New York State Education Department to continue to explore options for providing Multilingual Learners access to alternative assessments, including performance-based assessments."…

DEPARTMENT RESPONSE:

To the extent the comments are supportive of the proposed amendment, no response is necessary.

To the extent that the commenter requests that the Department reduce the number of times the test taker must take the examination before eligibility for an appeal and/or allow a student to appeal the score of any Regents examination, the Department believes the proposed amendment strikes the appropriate balance between the need to provide students with the opportunity to graduate and the Board of Regents desire to ensure that students are college and career ready upon graduation.

In the last couple of years, the Department has provided multiple safety net options for the Regents examinations and will continue to pursue other alternatives. Currently, Regents Rule section 8.3(1) and section 100.5 of the Commissioner's regulations generally set the passing score on the Regents examinations at 65. The appeals process is intended to carve out limited exceptions for students who are unable to pass a subset of Regents examinations at a 65, but have otherwise demonstrated the ability to meet the standards for graduation in those subject areas.

Moreover, the Department believes that making students take the examination twice before being eligible for an appeal provides the student with the opportunity to prepare for the examination again, with the intent for the student to review the material a second time; thereby providing them with a second meaningful opportunity to obtain the content knowledge for that subject area, so they can succeed in college and/or their career. In any case, the commenter is requesting a change to a requirement of the existing regulation that is beyond the scope of the current rule making.

EMERGENCY RULE MAKING

Interest Penalties for Late Annual Assessment Fees Paid by Licensed Private Career Schools

I.D. No. EDU-14-16-00004-E
Filing No. 580
Filing Date: 2016-06-14
Effective Date: 2016-06-20

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

Action taken: Amendment of section 126.14(c) of Title 8 NYCRR.

Statutory authority: Education Law, section 207(not subdivided), 305(1), (2) and 5001(9)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Regents policy and to properly implement Education Law § 5001(9)(d)by amending subdivision (c) of § 126.14 of the Commissioner's Regulations to reflect current practice relating to interest penalties for late payments of annual assessment fees by licensed private career schools. Section 126.14(c) allows the Department to subject annual assessment fees to interest penalties in the following magnitude:

(1) For payments received within the first 30 days after the due date the interest penalty shall be the product of the amount due multiplied by one twelfth of the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.

(2) For payments received more than 30 days after the due date the interest penalty shall be compounded daily for each day the payment is late at a rate of interest equal to the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.

(3) Interest penalties not paid within 15 days of notification of the amount of the penalty shall be increased in accordance with the method used by the commissioner to compute the interest penalty in the first instance.

The interest penalties in the current regulation are outside the scope of the plain language of Education Law § 5001(9), which provides for the payment of interest at one percent above the prevailing prime rate, and produce exorbitant penalty fees which most proprietary schools are unable to pay. As a result the revenues collected on principal owed the assessment fund are more difficult to collect and the Commissioner's ability to gain payment of amounts in arrears by virtue of the threat of suspension of a school's license loses its leverage. The Department can accomplish collection of due amounts related to the assessment fund through strict adherence to the plain meaning contained in the statute that the Commissioner's regulations are meant to implement.

At the March 2016 Regents meeting, the proposed amendment was adopted as an emergency action, effective March 22, 2016. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on April 6, 2016.

The proposed amendment has now been adopted as a permanent rule at the June 13-14, 2016 Regents meeting. Pursuant to SAPA § 203(1), the earliest effective date of the proposed amendment, if adopted at the February meeting, would be June 29, 2016, the date a Notice of Adoption will be published in the State Register. However, the March emergency rule will expire on June 19, 2016, ninety days after filing the Notice of Emergency Adoption and Proposed Rule Making with the Department of State on March 22, 2016. A lapse in the rule would disrupt the process of calculating and imposing interest penalties for late payments of annual as-

sessment fees by licensed private career schools, pursuant to Education Law § 5001(9).

Emergency action is therefore necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the March 2016 Regents meeting remains continuously in effect until the effective date of the rule's permanent adoption.

Subject: Interest penalties for late annual assessment fees paid by licensed private career schools.

Purpose: To conform regulations to reflect current practices.

Text of emergency rule: Subdivision (c) of section 126.14 of the regulations of the Commissioner of Education is amended, effective June 20, 2016, as follows:

(c) Pursuant to section 5001(9) of the Education Law, any annual assessment fees submitted by the schools to the department after the due date shall be subject to an interest penalty. The commissioner shall calculate the amount of the interest penalty as follows:

(1) [For payments received] *For each due date, payments made* within [the first] 30 days [after the] *following such* due date [the interest penalty] shall be [the product of the amount due multiplied by one twelfth of the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner] *subject to an interest penalty of one percent above the prevailing prime rate*.

[(2) For payments received more than 30 days after the due date the interest penalty shall be compounded daily for each day the payment is late at a rate of interest equal to the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.]

[(3)] *(2)* Interest penalties not paid within 15 days of notification of the amount of the penalty [shall] *may* be increased in accordance with the method used by the commissioner to compute the interest penalty in the first instance.

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-14-16-00004-EP, Issue of April 6, 2016. The emergency rule will expire August 12, 2016.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Article 101 of the Education Law (Education Law § § 5001 through 5010) authorizes the State Education Department to license and regulate private career schools. Education Law § 5001 sets forth the requirements for licensure of private career schools. Pursuant to Education Law § 5001(9), the Commissioner is directed to annually assess each school a total percentage of the school's gross tuition based upon the previous year ("annual assessment fee"), which shall be payable in equal quarterly installments due on June 1st, September 1st, December 1st and March 1st. The statute provides that any annual assessment fees submitted by the schools after the due date shall be subject to interest at one percent above the prevailing prime rate. Annual assessment fees and interest penalties are used to fund the Department's supervision and regulation of licensed private schools (Annual Supervision Fund). Payments of such fees and interest penalties are deemed to be a condition of a school's licensure, and the statute authorizes the Commissioner to suspend licensure for late payments.

2. LEGISLATIVE OBJECTIVES:

Consistent with the above authority, the proposed amendment is necessary to implement Regents policy, and to properly implement Education Law § 5001(9)(d), by amending subdivision (c) of § 126.14 of the Commissioner's Regulations to reflect current Department practice relating to interest penalties for late payments of annual assessment fees by licensed private career schools.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement Regents policy and to properly implement Education Law § 5001(9)(d) by amending subdivision (c) of § 126.14 of the Commissioner's Regulations to reflect current Department practice relating to interest penalties for late payments of annual assessment fees by licensed private career schools. Section 126.14(c) allows the Department to subject annual assessment fees to interest penalties in the following magnitude:

(1) For payments received within the first 30 days after the due date the interest penalty shall be the product of the amount due multiplied by one twelfth of the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.

(2) For payments received more than 30 days after the due date the interest penalty shall be compounded daily for each day the payment is late at a rate of interest equal to the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.

(3) Interest penalties not paid within 15 days of notification of the amount of the penalty shall be increased in accordance with the method used by the commissioner to compute the interest penalty in the first instance.

The interest penalties in the current regulation are outside the scope of the plain language of Education Law § 5001(9), which provides for the payment of interest at one percent above the prevailing prime rate, and produce exorbitant penalty fees which most proprietary schools are unable to pay. As a result the revenues collected on principal owed the assessment fund are more difficult to collect and the Commissioner's ability to gain payment of amounts in arrears by virtue of the threat of suspension of a school's license loses its leverage. The Department can accomplish collection of due amounts related to the assessment fund through strict adherence to the plain meaning contained in the statute that the Commissioner's regulations are meant to implement.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local governments: none.

(c) Costs to private, regulated parties: none.

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

The proposed amendment relates to interest penalties for late annual assessment fees paid by licensed private career schools and is necessary to implement Regents policy and properly implement Education Law § 5001(9)(d) by amending subdivision (c) of § 126.14 of the Commissioner's Regulations to reflect current Department practice in order to prevent exorbitantly high late fees from being calculated which most proprietary schools are unable to pay. As a result the revenues collected on principal owed the assessment fund are more difficult to collect and the Commissioner's ability to gain payment of amounts in arrears by virtue of the threat of suspension of a school's license loses its leverage. The Department can accomplish collection of due amounts related to the assessment fund through strict adherence to the plain meaning contained in the statute that the Commissioner's regulations are meant to implement.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

There are no additional paperwork or recordkeeping requirements beyond those inherent in the statute.

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date. The proposed amendment relates to interest penalties for late annual assessment fees paid by licensed private career schools and does not impose any additional costs or compliance requirements on such schools. The proposed amendment is necessary to implement Regents policy and properly implement Education Law § 5001(9)(d) by amending subdivision (c) of § 126.14 of the Commissioner's Regulations to reflect current Department practice in order to prevent exorbitantly high late fees from being calculated which most proprietary schools are unable to pay. As a result the revenues collected on principal owed the assessment fund are more difficult to collect and the Commissioner's ability to gain payment of amounts in arrears by virtue of the threat of suspension of a school's license loses its leverage. The Department can accomplish collection of due amounts related to the assessment fund through strict adherence to the plain meaning contained in the statute that the Commissioner's regulations are meant to implement.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF THE RULE:

The proposed amendment is applicable to all licensed private career schools and certified English as a second language schools in the State. There are 397 such schools in the State. The Department does not keep records on the number of such schools that are small businesses, however it is believed that almost all of the 397 schools are small businesses.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment relates to interest penalties for late annual assessment fees paid by licensed private career schools and does not impose any additional compliance requirements on such schools. Section 126.14(c) allows the Department to subject annual assessment fees to interest penalties in the following magnitude:

(1) For payments received within the first 30 days after the due date the interest penalty shall be the product of the amount due multiplied by one twelfth of the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.

(2) For payments received more than 30 days after the due date the interest penalty shall be compounded daily for each day the payment is late at a rate of interest equal to the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.

(3) Interest penalties not paid within 15 days of notification of the amount of the penalty shall be increased in accordance with the method used by the commissioner to compute the interest penalty in the first instance.

The interest penalties in the current regulation are outside the scope of the plain language of Education Law § 5001(9), which provides for the payment of interest at one percent above the prevailing prime rate, and produce exorbitant penalty fees which most proprietary schools are unable to pay. As a result the revenues collected on principal owed the assessment fund are more difficult to collect and the Commissioner's ability to gain payment of amounts in arrears by virtue of the threat of suspension of a school's license loses its leverage. The Department can accomplish collection of due amounts related to the assessment fund through strict adherence to the plain meaning contained in the statute that the Commissioner's regulations are meant to implement.

3. PROFESSIONAL SERVICES:

The proposed amendment will not require any additional professional services in order to comply.

4. COMPLIANCE COSTS:

The proposed amendment relates to interest penalties for late annual assessment fees paid by licensed private career schools and does not impose any additional costs on such schools. The proposed amendment is necessary to implement Regents policy and properly implement Education Law § 5001(9)(d) by amending subdivision (c) of § 126.14 of the Commissioner's Regulations to reflect current Department practice in order to prevent exorbitantly high late fees from being calculated which most proprietary schools are unable to pay. As a result the revenues collected on principal owed the assessment fund are more difficult to collect and the Commissioner's ability to gain payment of amounts in arrears by virtue of the threat of suspension of a school's license loses its leverage. The Department can accomplish collection of due amounts related to the assessment fund through strict adherence to the plain meaning contained in the statute that the Commissioner's regulations are meant to implement.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements on small businesses. Economic feasibility is discussed in the above Costs section.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment relates to interest penalties for late annual assessment fees paid by licensed private career schools and does not impose any additional compliance requirements or costs on such schools. The proposed amendment is necessary to implement Regents policy and properly implement Education Law § 5001(9)(d) by amending subdivision (c) of § 126.14 of the Commissioner's Regulations to reflect current Department practice in order to prevent exorbitantly high late fees from being calculated which most proprietary schools are unable to pay. As a result the revenues collected on principal owed the assessment fund are more difficult to collect and the Commissioner's ability to gain payment of amounts in arrears by virtue of the threat of suspension of a school's license loses its leverage. The Department can accomplish collection of due amounts related to the assessment fund through strict adherence to the plain meaning contained in the statute that the Commissioner's regulations are meant to implement.

7. SMALL BUSINESS PARTICIPATION:

The State Education Department has posted the proposed regulation on its website for comments from interested parties, and has notified two large associations representing the majority of licensed private career schools in the State, so that they can inform their respective members of the proposed amendment.

(b) Local Governments:

The proposed amendment relates to interest penalties for late payment of annual assessment fees by licensed private career schools. It is clear from the nature of the proposed amendment that it does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on local governments. No further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and none has been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment is applicable to all licensed private career schools and certified English as a second language schools in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Currently, there are 397 such schools. Of these, approximately 15 are located in a rural area of the State.

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

The proposed amendment relates to interest penalties for late annual assessment fees paid by licensed private career schools and does not impose any additional compliance requirements on such schools. Section 126.14(c) allows the Department to subject annual assessment fees to interest penalties in the following magnitude:

(1) For payments received within the first 30 days after the due date the interest penalty shall be the product of the amount due multiplied by one twelfth of the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.

(2) For payments received more than 30 days after the due date the interest penalty shall be compounded daily for each day the payment is late at a rate of interest equal to the sum of one plus the prevailing prime rate of interest on the due date as determined by the commissioner.

(3) Interest penalties not paid within 15 days of notification of the amount of the penalty shall be increased in accordance with the method used by the commissioner to compute the interest penalty in the first instance.

The interest penalties in the current regulation are outside the scope of the plain language of Education Law § 5001(9), which provides for the payment of interest at one percent above the prevailing prime rate, and produce exorbitant penalty fees which most proprietary schools are unable to pay. As a result the revenues collected on principal owed the assessment fund are more difficult to collect and the Commissioner's ability to gain payment of amounts in arrears by virtue of the threat of suspension of a school's license loses its leverage. The Department can accomplish collection of due amounts related to the assessment fund through strict adherence to the plain meaning contained in the statute that the Commissioner's regulations are meant to implement.

The proposed amendment will not require any additional professional services in order to comply.

3. COSTS:

The proposed amendment relates to interest penalties for late annual assessment fees paid by licensed private career schools and does not impose any additional costs on such schools. The proposed amendment is necessary to implement Regents policy and properly implement Education Law § 5001(9)(d) by amending subdivision (c) of § 126.14 of the Commissioner's Regulations to reflect current Department practice in order to prevent exorbitantly high late fees from being calculated which most proprietary schools are unable to pay. As a result the revenues collected on principal owed the assessment fund are more difficult to collect and the Commissioner's ability to gain payment of amounts in arrears by virtue of the threat of suspension of a school's license loses its leverage. The Department can accomplish collection of due amounts related to the assessment fund through strict adherence to the plain meaning contained in the statute that the Commissioner's regulations are meant to implement.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment relates to interest penalties for late annual assessment fees paid by licensed private career schools and does not impose any additional compliance requirements or costs on such schools. The proposed amendment is necessary to implement Regents policy and properly implement Education Law § 5001(9)(d) by amending subdivision (c) of § 126.14 of the Commissioner's Regulations to reflect current Department practice in order to prevent exorbitantly high late fees from being calculated which most proprietary schools are unable to pay. As a result the revenues collected on principal owed the assessment fund are more difficult to collect and the Commissioner's ability to gain payment of amounts in arrears by virtue of the threat of suspension of a school's license loses its leverage. The Department can accomplish collection of due amounts related to the assessment fund through strict adherence to the plain meaning contained in the statute that the Commissioner's regulations are meant to implement.

5. RURAL AREA PARTICIPATION:

The State Education Department has posted the proposed regulation on its website for comments from interested parties, and has notified two large associations representing the majority of licensed private career schools in the State, including some located in rural areas, so that they can inform their respective members of the proposed amendment.

Job Impact Statement

The proposed amendment is necessary to implement Regents policy and to properly implement Education Law § 5001(9)(d) by amending

subdivision (c) of § 126.14 of the Commissioner's Regulations to reflect current practice in order to prevent exorbitantly high late fees from being calculated, thereby ensuring the State Education Department's Bureau of Proprietary Schools is able to utilize its ability to suspend the licenses of private career schools and private schools to more effectively ensure timely payment of the annual assessment fee.

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on March 22, 2016, the State Education Department received a couple of comments.

1. COMMENT:

The commenters supported the regulation.

DEPARTMENT RESPONSE:

Because the comments are supportive in nature, no response is required.

EMERGENCY RULE MAKING

Registration and Continuing Teacher and Leader Education Requirement

I.D. No. EDU-14-16-00009-E

Filing No. 582

Filing Date: 2016-06-14

Effective Date: 2016-06-20

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

Action taken: Amendment of sections 80-3.6 and 100.2(dd); and addition of Subpart 80-6 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 212(3), 3004(1), 3006(1), (3), 3006-a(1)-(3) and 3009(1)

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement the provisions of Subpart C of Part EE of Chapter 56 of the Laws of 2015 which establishes the registration and continuing teacher and leader education requirements for certain teachers and school leaders.

A Notice of Proposed Rule Making was published in the State Register on April 6, 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 June Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the June meeting, would be July 29, 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 timely implement the provisions of Subpart C of Part EE of Chapter 56 of the Laws of 2015, which becomes effective July 1, 2016. The new law requires, commencing with the 2016-2017 school year, any holder of a teaching certificate in the classroom teaching service, teaching assistant or educational leadership that is valid for life to register with the department every five years. The statute also requires holders of a professional certificate in the classroom teaching service or educational leadership service (i.e., school building leader, school district leader, school district business leader) and holders of a Level III teaching assistant certificate employed in a school district or board of cooperative educational services in New York State to complete certain continuing teacher and leader education requirements beginning on July 1, 2016. Emergency action was needed at the March 2016 meeting in order to provide these teachers and school leaders with sufficient notice of the new registration requirements and to ensure that there are a sufficient amount of approved sponsors by July 1, 2016 so that teachers and leaders can comply with the new continuing teacher and leader education requirements by the statute's stated effective date.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period for as provided for in State Administrative Procedure Act (SAPA) is the June 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the June Regents meeting, is June 29, 2016, the date a Notice of Adoption would be published in the State Register. Therefore, emergency action is needed to adopt the proposed rule in order to ensure that the emergency rule adopted at the March meeting will remain in effect continuously until it can be adopted as a permanent rule.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the June 2016 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.

Subject: Registration and continuing teacher and leader education requirement.

Purpose: To implement supbart C of part EE of chapter 56 of the Laws of 2015.

Substance of emergency rule: The Commissioner of Education proposes to amend Subpart 80-6 and section 100.2(dd) of the Commissioner's Regulations, relating to the registration process for any holder of a certificate in the classroom teaching service or educational leadership service that is valid for life (Permanent, Professional and Teaching Assistant Level III) and the establishment of continuing teacher and leader education (CTLE) requirements for Professional and Teaching Assistant Level III certificate holders. The proposed rule also maintain the requirement in Section 100.2(dd) of the Regulations of the Commissioner of Education for school districts and BOCES to develop a professional development plan, amending the 175 hour requirement to 100 hours to be consistent with the new law. The following is a summary of the substance of the rule.

Section 80-6.1 defines applicable school, certificate holder, CTLE certificate holder, practicing and registration period.

Section 80-6.2 sets forth the registration requirements for all permanent and professional certificate holders in the classroom teaching service and Level III Teaching Assistant certificate holders, commencing with the 2016-2017 school year. This section describes when certificate holders will be required to register and re-register with the Department, as well as how to notify the Department if not practicing in an applicable school (and therefore does not need to register). This section also authorizes the Department to charge a late fee of $10 if a certificate holder fails to register.

Section 80-6.3 describes the mandatory CTLE requirements for all holders of professional certificates in the classroom teaching service, educational leadership service, and Level III Teaching Assistant certificate holders. Beginning with the 2016-17 school year, all CTLE certificate holders must complete 100 hours of acceptable CTLE, including at least 15% of such time devoted to the language acquisition needs of English language learners. If a CTLE certificate holder holds a professional certificate in English to speakers of other languages or a bilingual extension, he/she shall be required to complete 50% of CTLE in language acquisition. There are also provisions for adjustments to the CTLE requirement for documented good cause, for a peer review teacher or principal conducting a classroom observation pursuant to Education Law § 3012-d to obtain credit for time observing, and for candidates who achieve National Board Certification and exemptions from the language acquisition requirements for teachers or leaders employed by a school district with an approved exemption under Part 154 of the Commissioner's regulations.

Section 80-6.4 of the Regulation describes how CTLE is measured for both credit-bearing courses and all other approved CTLE courses.

Section 80-6.5 provides for a conditional registration that may be issued, at the discretion of the Department, to a CTLE certificate holder who attests to noncompliance with the CTLE requirements. Such conditional registration may not exceed one year, and may be granted provided that the certificate holder agrees to remedy the deficiency within the conditional registration period as well as any additional CTLE that the Department may require.

Section 80-6.6 of the Regulation describes the process of renewing registration at the end of each registration period.

Section 80-6.7 describes the recordkeeping requirements of CTLE certificate holders. These requirements include: the title of the program, the total number of hours completed, the number of hours completed in language acquisition addressing the needs of English language learners, the sponsor's name and identifying number, attendance verification, and the date and location of the program. This information must be retained for at least three years from the end of the registration period during which such CTLE was completed.

Section 80-6.8 states how a CTLE certificate holder resumes practice in an applicable school after a period of inactivity.

Section 80-6.9 describes the requirement that acceptable CTLE must be taken from a sponsor approved by the Department.

Section 80-6.10 relates to the sponsor approval requirements. This includes a list of the entities that may become approved sponsors, the requirements for such sponsor, fees (if applicable), and what entities must attest to when applying to become an approved sponsor. Sponsors will be approved by the Department for a period of five years, and at the expiration of such term must reapply for approval.

Lastly, section 100.2(dd) of the Commissioner's regulations is amended to conform to require school districts/BOCES to provide teachers and school leaders with a professional certificate and Level III teaching assistants with opportunities to complete 175 hours of professional development or 100 hours of CTLE, as required under Part 80, to comply with the new law.

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-14-16-00009-EP, Issue of April 6, 2016. The emergency rule will expire August 12, 2016.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law 101(not subdivided) charges the Department with the general management and supervision of the educational work of the State.

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

Education Law 210(not subdivided) authorizes the Regents to register domestic and foreign institutions in terms of New York standards.

Education Law 212(3) authorizes the Department to charge fees for costs for certifications or permits in regulations for which fees are not otherwise provided.

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

Education Law 3004(1) authorizes the Commissioner to promulgate regulations governing the certification requirements for teachers.

Education Law 3006 establishes the types of teaching certificates and licenses that the Commissioner may issue and the registration requirements for holders of a certificates in the classroom teaching service, teaching assistant, or educational leadership certificates that are valid for life as prescribed by the commissioner in regulations.

Education Law 3006-a establishes the registration and continuing teacher and leader education (CTLE) requirements for holders of professional certificates in the classroom teaching service, holders of Level III teaching assistant certificates and holders of professional certificates in the educational leadership service.

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

2. LEGISLATIVE OBJECTIVES:

The proposed rule is necessary to implement Subpart C of Part EE of Chapter 56 of the Laws of 2015.

3. NEEDS AND BENEFITS:

Registration

Commencing with the 2016-2017 school year, any holder of a teaching certificate in the classroom teaching service, teaching assistant or educational leadership that is valid for life to register with the department every five years. These certificate holders must be registered in order to engage in the practice of his or her certificate area in New York State.

The proposed amendment provides the following registration periods:

- For teachers and school leaders with a permanent or professional certificate or a Level III Teaching Assistant certificate issued prior to July 1, 2016, they shall apply for initial registration during the 2016-2017 school year during his/her month of birth, beginning on July 1, 2016 and shall renew his/her registration in the last year of each subsequent five-year period thereafter.
- For teachers and school leaders with a permanent or professional certificate or a Level III Teaching Assistant certificate issued on or after July 1, 2016, they shall be automatically registered, and the certificate holder shall re-register during the fifth succeeding birthday month thereafter and during each birthday month in the last year of each subsequent five-year period.

Teachers and school leaders will be required to register and re-register through the TEACH system. The application will allow the certificate holder to either register or notify the Department that he/she is not practicing in New York and does not wish to register.

If a certificate holder does not register before his/her specified registration date, he/she shall not be employed in his/her certificate area and may be subject to late fees of $10 per month.

CTLE

Ed. L. 3006-a requires, commencing with the 2016-2017 school year, holders of a professional certificate in the classroom teaching service or educational leadership service and holders of a Level III Teaching Assistant certificate who are practicing in a New York public school or BOCES to complete 100 hours of CTLE during each five year registration period.

Consistent with the current professional development requirements for teachers and school leaders, which are now being repealed, the proposed amendment also requires that certificate holders complete the following CTLE requirements in language acquisition to address the needs of English language learner students:

- a CTLE certificate holder who holds a professional certificate in the certificate title of English to speakers of other languages (all grades) or a holder of a bilingual extension under section 80-4.3 of this Title, shall be required to complete a minimum of 50 percent of the required CTLE clock hours in language acquisition; and
- for all other CTLE certificate holders a minimum of 15 percent of the required CTLE clock hours shall be dedicated to language acquisition; and
- for a CTLE certificate holder who holds a Level III Teaching Assistant certificate, a minimum of 15 percent of the required CTLE clock hours shall be dedicated to language acquisition.

Based on feedback from the field, the proposed amendment provides an exemption from these requirements for teachers/school leaders in districts who possess a waiver from such requirements pursuant to Part 154 of the Commissioner's regulations.

The statute further requires that the CTLE be rigorous and completed through a sponsor approved by the Department. The proposed amendment also requires CTLE to be aligned with the following NYS Professional Development standards created by the Professional Standards and Practices Board.

The statute also contains a provision which allows adjustments to the 100 hour CTLE requirement to be made by the Department for health reasons, military service or good cause acceptable to the Department which may prevent compliance. In addition, the statute also allows a peer review teacher, or a principal acting as an independent trained evaluator, conducting a classroom observation as part of the teacher evaluation system to credit his/her time towards meeting his/her CTLE. The proposed amendment also provides an adjustment to the CTLE requirement for a holder of a teaching certificate who achieves certification from the National Board for Professional Teaching Standards for the registration period in which such certification is achieved, provided that the candidate meets the CTLE requirements in language acquisition, if required.

A conditional registration may be issued to allow a candidate up to one year to complete the remaining CTLE hours to remain eligible to practice in a New York State public school or BOCES. When the CTLE has been completed, the CTLE certificate holder will be deemed registered for the remaining registration period. If the CTLE certificate holder continues to practice at an applicable school without his/her registration, he/she may be subject to moral character review pursuant to Part 83 of the Commissioner's regulations. The proposed amendment also requires CTLE certificate holders to maintain a record of their completed CTLE, similar to other licensed professions.

In addition, the proposed amendment requires that if a CTLE certificate holder returns to practice in an applicable school, he/she will be required to register with the Department prior to resuming practice. If the certificate holder is in the middle of a registration period when he/she becomes inactive and is no longer practicing, he/she must complete a minimum of 20 hours of CTLE for every year that he/she was practicing in an applicable school.

Continuing Teacher and Leader Education Sponsors

Education Law § 3006-a also requires the Department to approve all CTLE sponsors. School districts or BOCES may apply as sponsors and will be required to attest that they have a professional development plan consistent with 100.2(dd) of the Commissioner's regulations. For teacher centers, IHEs and professional organizations and unions, they will be required to submit an attestation that the CTLE they provide will meet the rigorous CTLE requirements in the regulations in order to be approved. None of these entities will be required to pay a fee. All other entities will be required to apply to the Department on an application form prescribed by the Department, with a $600 fee and they will have to demonstrate how they meet each of the CTLE requirements outlined in the regulation and they will be subject to the Department's approval. Each sponsor will be approved for a five year period and will then be required to submit a renewal application.

Professional Development Plans

The proposed amendment also retains the requirement in 100.2(dd) of the regulations for school districts and BOCES to develop a professional development plan, but amends the requirements to require such plan to only include 100 hours instead of the currently required 175 hours to be consistent with the new law.

4. COSTS:

a. Costs to State government: The rule implements Subpart C of Part EE of Chapter 56 of the Laws of 2015 and does not impose any costs on State government, including the State Education Department, beyond those costs imposed by the statute.

b. Costs to local government: The new rule does not impose any costs on local government, including school districts and BOCES, beyond those costs imposed by the Statute.

Sponsors:

The proposed amendment requires providers of continuing teacher and leader education to be approved by the Department. There is a $600 fee for entities seeking approval by the Department, however, this fee is waived for all school districts, BOCES, teacher centers, NYS institutions of higher education, professional organizations and unions.

c. Costs to private regulated parties: None, unless a certificate holder chooses to obtain CTLE through an approved provider that charges a fee for CTLE courses. Also, if a certificate holder does not register before his/her specified registration date, he/she shall not be employed in his/her certificate area and may be subject to late fees of $10 per month.

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, except as otherwise provided or in the Paperwork section in section 6.

6. PAPERWORK:

Certificate holders must register and re-register every five years through the online TEACH system. Registration for those newly certified will be automatic upon certification. Reporting requirements for completed CTLE by certificate holders for school districts and BOCES must be also be completed through the online TEACH system.

The proposed amendment also requires that school districts and BOCES (as well as all other approved sponsors) report information to the Department on CTLE hours completed by attendees including the program and the number of hours completed, through the online TEACH system.

It also requires CTLE certificate holders to maintain a record of completed CTLE, including: the title of the program, the total number of hours completed, the number of hours completed in language acquisition addressing the needs of English language learners, the sponsor's name and any identifying number, attendance verification, and the date and location of the program for at least three years from the end of the registration period in which the CTLE was completed.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

There are no alternatives to the registration and CTLE requirements imposed by the new law, and the law applies equally to all permanent, professional, and teaching assistant Level III certificate holders practicing in New York State. However, the statute includes provisions for a conditional registration and adjustments to CTLE requirements for those who are unable to fulfill their CTLE requirements during the five-year registration period for certain enumerated reasons.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

Education Law § 3006 requires holders of a teaching certificate in the classroom teaching service, teaching assist or educational leadership certificate that is valid for life to register every five years commencing with the 2016-2017 school year. Education Law § 3006-a requires that commencing with the 2016-2017 school year, each holder of a professional certificate in the classroom teaching service, holder of a level III teaching assistant to comply with the CTLE requirements enumerated in the statute.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed rule implements, and otherwise conforms the Commissioner's regulations to Subpart C of Part EE of Chapter 56 of the Laws of 2015 relating to the registration process for all Permanent, Professional and Teaching Assistant Level III certificate holders and the establishment of continuing teacher and leader education (CTLE) requirements for Professional and Teaching Assistant Level III certificate holders. The proposed rule also retains the requirement in Section 100.2(dd) of the Regulations of the Commissioner of Education for school districts and BOCES to develop a professional development plan, amending the 175 hour requirement to 100 hours to be consistent with the new law. The rule does not impose any new 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:

Commencing with the 2016-2017 school year, any holder of a teaching certificate in the classroom teaching service, teaching assistant or educational leadership that is valid for life to register with the department every five years and holders of a professional certificate in the classroom teaching service or educational leadership service (i.e., school building leader, school district leader, school district business leader) and holders of a Level III Teaching Assistant certificate who are practicing in a New York public school or board of cooperative educational services (BOCES) shall be required to complete 100 hours of Continuing Teacher and Leader Education (CTLE) during each five year registration period. School districts and BOCES will also be required to apply to the Department if they would like to become an approved sponor to offer CTLE. The proposed rule also retains the requirement in Section 100.2(dd) of the Regulations of the Commissioner of Education for school districts and BOCES to develop a professional development plan, amending the 175 hour requirement to 100 hours to be consistent with the new law.

2. COMPLIANCE REQUIREMENTS:

See Needs and Benefits and Paperwork sections of the Regulatory Impact Statement submitted herewith for an analysis of the compliance requirements for holders of Permanent, Professional, and Teaching Assistant Level III certificates and Department approved sponsors, including school districts and BOCES.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

There are no additional costs on local governments beyond those imposed by the statute. Moreover, school districts and BOCES will not be required to pay a fee to become an approved sponsor under the proposed amendment.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on holders of Permanent, Professional, and Teaching Assistant Level III certificates, school districts or BOCES. Economic feasibility is addressed in the Costs section of the Regulatory Impact Statement submitted herewith. Registration will be completed through the online TEACH system, which has been used by certificate holders for certification and employment purposes.

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement, and otherwise conform the Commissioner's Regulations to, Subpart C of Part EE of Chapter 56 of the Laws of 2015 which requires a registration process for all Permanent, Professional and Teaching Assistant Level III certificate holders and the establishment of continuing teacher and leader education (CTLE) requirements for Professional and Teaching Assistant Level III certificate holders. Since these provisions of the Education Law apply equally to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements. However, the Department provided flexibility to local governments in that it waived the fee to become an approved CTLE sponsor for school districts and BOCES.

7. LOCAL GOVERNMENT PARTICIPATION:

The Department sought guidance from several stakeholder groups, including the New York State United Teachers, the United Federation of Teachers, NYS School Board Association, NYS Council of School Superintendents, and district superintendents, which are representatives of local governments or employees of local governments.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement State statute. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

Commencing with the 2016-2017 school year, any holder of a teaching certificate in the classroom teaching service, teaching assistant or educational leadership that is valid for life to register with the department every five years and holders of a professional certificate in the classroom teaching service or educational leadership service (i.e., school building leader, school district leader, school district business leader) and holders of a Level III Teaching Assistant certificate who are practicing in a New York public school or board of cooperative educational services (BOCES) shall be required to complete 100 hours of Continuing Teacher and Leader Education (CTLE) during each five year registration period, including

those certificate holders who live or work in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

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

3. COSTS:

See the Costs section of the Regulatory Impact Statement submitted herewith for an analysis of the costs of the proposed rule, including for certificate holders and sponsors located in rural areas of this State.

4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement, and otherwise conform the Commissioner's Regulations to, Subpart C of Part EE of Chapter 56 of the Laws of 2015 relating to the registration process for all Permanent, Professional and Teaching Assistant Level III certificate holders and the establishment of CTLE requirements for Professional and Teaching Assistant Level III certificate holders. The statute does not establish differing compliance or reporting requirements for certificate holders in rural areas.

However, where the Department had some flexibility, it provided a waiver from the requirements from the CTLE requirements related to language acquisition for teachers, leaders and teaching assistants employed by a district or BOCES with an approved Part 154 waiver.

5. RURAL AREA PARTICIPATION:

The Department sought guidance on the proposed amendment from several stakeholder groups, including the New York State United Teachers, the United Federation of Teachers, the NYS School Board Association, the NYS Council of School Superintendents, and district superintendents, who have representatives who live and/or work in rural areas of this State. Many of the comments from these stakeholder groups have been incorporated into the proposed amendment.

Job Impact Statement

The purpose of proposed rule is to implement Subpart C of Part EE of Chapter 56 of the Laws of 2015 relating to the registration process for all Permanent, Professional and Teaching Assistant Level III certificate holders and the establishment of continuing teacher and leader education (CTLE) requirements for Professional and Teaching Assistant Level III certificate holders. The proposed rule also retains the requirement in Section 100.2(dd) of the Regulations of the Commissioner of Education for school districts and BOCES to develop a professional development plan, amending the 175 hour requirement to 100 hours to be consistent with the new law. Because the proposed amendment implements statutory requirements and 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 beyond those imposed by statute, 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 April 6, 2016, the State Education Department (SED) received the following comments:

1. COMMENT:

Several commenters request that the Department does not implement late fees for certificate holders that do not register during the 2016-2017 school year.

DEPARTMENT RESPONSE:

SED agrees. The Department will not impose any late fees on certificate holders that fail to register during the 2016-2017 school year.

2. COMMENT:

Several commenters suggested that there should be an appeals process in the future for certificate holders who miss their registration deadline, in order to appeal the $10 late fee.

DEPARTMENT RESPONSE:

Section 80-6.2(f) provides that failure to register may subject a certificate holder to a late fee of $10 per month. Given the fact that the late fee is discretionary, if an applicant disagrees with the Department's determination that a late fee shall be imposed (e.g., because the licensee was in inactive status), the licensee shall have an opportunity to be heard in a time and manner prescribed by the Department.

3. COMMENT:

Several commenters suggested that NYSED require all certificate holders who are required to initially register this year to register on July 1, 2016 rather than during their birthday month during the 2016-2017 school year. Commenters noted that using the birthday month would be hard for districts and BOCES to track, and suggested that all professional and Level III certificate holders begin registration on July 1, 2016 rather than their birthday month.

DEPARTMENT RESPONSE:

Education Law § 3006(3), as added by Chapter 56 of the Laws of 2015, allows the Department to stagger initial registrations so that registrations are distributed as equally as possible throughout the year, which the Department believes is necessary in order to avoid an overload in the online TEACH system. The Department chose the birthday month of the certificate holder in an effort to make it easier for candidates to remember when they must register and to distribute initial registrations throughout each month of the year. The Department has also tried to make it easier for first time certificate holders to register by making initial registration automatic on the date of issuance of their certificate.

4. COMMENT:

Several commenters suggested that current NYSED approved CTLE providers (school districts, BOCES, teacher centers, NYS colleges, NYSUT and other professional organizations) should not have to register every five years. They noted that if a school or BOCES is merged, joined, etc., NYSED will know about it and can adjust the NYSED records.

DEPARTMENT RESPONSE:

Education Law 3006-a requires that CTLE programs be taken from sponsors approved by the Department, including but not limited to school districts. It also requires that CTLE activities promote the professionalism of teaching and be closely aligned to district goals for student performance which meet the standards prescribed by the Commissioner. These regulations were carefully drafted to ensure that CTLE activities meet the requirements of the statute while also making it as simple as possible for school districts, BOCES, teacher centers and professional organizations to become approved sponsors and to be renewed as approved sponsors. For instance, the Department has streamlined the application process to become an approved sponsor and to renew their application and these entities are not required to pay a fee for initial approval or renewal of their registration and the five-year requirement for re-registration is consistent with the current requirements for professional development plans as required under 100.2(dd) of the Commissioner's Regulations.

5. COMMENT:

Several commenters suggested that professional development hours completed during the current five-year cycle (before July 1, 2016) be counted towards fulfilling CTLE requirements for certificate holders once the new CTLE requirement begins.

DEPARTMENT RESPONSE:

The law requires that CTLE be completed during the five-year registration period beginning on or after July 1, 2016. Therefore, professional development completed before this date cannot be carried over. In addition, the statute requires that "to fulfill the CTLE requirement, programs must be taken from sponsors approved by the Department…" Because professional development hours completed prior to July 1, 2016 may not have been taken from a sponsor approved by the Department under the new statute, these hours cannot be counted toward the certificate holders' five-year registration period under the new law which requires CTLE programs to be taken from sponsors approved by the Department.

6. COMMENT:

Several commenters disagree that those certificate holders who fail to notify the department of a name or address change within 30 days be subject to moral character review, because it is threatening and difficult to enforce.

DEPARTMENT RESPONSE:

Education Law § 3006(3)(d) provides that a willful failure to register or to provide notice of an address change within 180 days of such change may constitute grounds for moral character review. Since this is a statutory provision, no change is warranted.

7. COMMENT:

Several commenters suggested that CTLE recordkeeping remain as currently for school districts and BOCES, including submission of professional development plans. The concern is that the forms and terms used as part of the professional development plans are negotiated with the unions and it will be hard to revise to include requirements for English language learners, program titles, locations, and to add additional columns.

DEPARTMENT RESPONSE:

The Department has retained the requirement for professional development plans in 100.2(dd) of the Commissioner's Regulations for school districts and BOCES to develop a professional development plan, but amended the requirements to require such plans to only include 100 hours instead of the currently required 175 hours to be consistent with the CTLE requirements in Education Law § 3006-a. However, the Department encourages school districts and BOCES to provide additional CTLE to their teachers and school leaders to ensure that they remain current with their profession and meet the learning needs of their students.

8. COMMENT:

Several commenters support the change from 175 hours to 100 hours for both teachers and educational leaders, but do not support this same increase for teaching assistants because they are generally not teachers of record and in most cases act as classroom aides, and do not currently attend and/or participate in more thorough trainings that are offered to teachers and leaders.

DEPARTMENT RESPONSE:

Education Law § 3006-a(2)(a) requires holders of Level III teaching assistant certificates to complete 100 hours of CTLE. Since this is a statutory requirement, no regulatory change is warranted.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. EDU-26-16-00015-EP

Filing No. 570

Filing Date: 2016-06-14

Effective Date: 2016-06-14

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

Proposed Action: Amendment of sections 30-2.3(c), 30-3.3(c), 30-3.4(b)(1), (2), (d)(2), 30-3.5(b)(1), (2), (d)(13), 30-3.11 and 30-3.13 of 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 purpose of the proposed amendment is to provide districts and BOCES with additional options for measures to use in the student performance category and greater flexibility in scoring observations in the observation category. It also seeks to clarify that the Department may require changes to a collective bargaining agreement in a corrective action plan subject to collective bargaining under Article 14 of the Civil Service Law and that teacher/principal improvement plans are required to negotiated, to the extent required under Article 14 of the Civil Service Law.

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

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

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

Purpose: Technical Amendments.

Text of emergency/proposed rule: 1. Subdivision (c) of section 30-2.3 shall be amended, effective June 14, 2016, to read as follows:

(c)*(1)* Subject to the provisions of Education Law 3012-c(2)(k), the entire annual professional performance review shall be completed and provided to *the* teacher or the principal as soon as practicable but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is being measured. The teacher's and principal's score and rating on the locally selected measures subcomponent, if available, and on the other measures of teacher and principal effectiveness subcomponent for a teacher's or principal's annual professional performance review shall be computed and provided to the teacher or principal, in writing, by no later than the last day of the school year for which the teacher or principal is being measured, but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured. Nothing in this subdivision shall be construed to authorize a teacher or principal to commence the appeal process prior to receipt of their composite effectiveness score and rating. Each such annual professional performance review shall be based on the State assessments or other comparable measures subcomponent, the locally selected measures of student achievement subcomponent and the other measures of teacher and principal effectiveness subcomponent, determined in accordance the applicable provisions of Education Law section 3012-c and this Subpart, for the school year for which the teacher's or principal's performance is measured.

(2) Notwithstanding any provisions in this subdivision to the contrary, for the 2015-16 school year, teachers or principals whose annual professional performance reviews are based, in whole or in part, on the results of the grades 3-8 English language arts or mathematics State assessments and/or State-provided growth scores on Regents examinations shall be provided with their annual professional performance review transition scores and ratings computed pursuant to section 30-2.14 of this Subpart as soon as practicable but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is being measured. During the 2015-16 school year, such teachers and principals shall also be provided with their original composite rating computed pursuant to section 3012-c of the Education Law and this Subpart by September 1st of the school year next following the school year for which the teacher or principal's performance is being measured, or as soon as practicable thereafter.

2. Subdivision (c) of section 30-3.3 of the Rules of the Board of Regents, effective June 14, 2016, is amended to read as follows:

(c)*(1)* [The] *Except as otherwise provided in paragraph (2) of this subdivision, the* entire annual professional performance review shall be completed and provided to the teacher or the principal as soon as practicable but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured. The teacher's and principal's score and rating on the observation/school visit category and in the student performance category, if available, shall be computed and provided to the teacher or principal, in writing, by no later than the last day of the school year for which the teacher or principal is being measured, but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is measured. Nothing in this subdivision shall be construed to authorize a teacher or principal to commence the appeal process prior to receipt of his or her overall rating. Districts shall ensure that there is a complete evaluation for all classroom teachers and building principals, which shall include scores and ratings on the subcomponent(s) of the student performance category and the observation/school visit category and the combined category scores and ratings, determined in accordance with the applicable provisions of Education Law section 3012-d and this Subpart, for the school year for which the teacher's or principal's performance is measured.

(2) Notwithstanding any provisions in this subdivision to the contrary, during the 2015-16 through 2018-19 school years, teachers or principals whose annual professional performance reviews are based, in whole or in part, on the results of the grades 3-8 English language arts or mathematics State assessments and/or State-provided growth scores on Regents examinations shall be provided with their annual professional performance review transition scores and ratings computed pursuant to section 30-3.17 of this Subpart as soon as practicable but in no case later than September 1st of the school year next following the school year for which the teacher or principal's performance is being measured. During the 2015-16 through 2018-19 school years, such teachers and principals shall also be provided with their original composite rating computed pursuant to section 3012-d of the Education Law and this Subpart by September 1st of the school year next following the school year for which the teacher or principal's performance is being measured, or as soon as practicable thereafter.

3. Subparagraph (ii) of paragraph (1) of subdivision (b) of section 30-3.4 of the Rules of the Board of Regents is amended, effective June 14, 2016, to read as follows:

(ii) for a teacher whose course does not end in a State-created or administered test or where less than 50 percent of the teacher's students are covered by a State-provided growth measure, such teacher shall have a student learning objective (SLO) developed and approved by his/her superintendent or his or her designee, using a form prescribed by the commissioner, consistent with the SLO process determined or developed by the commissioner, that results in a student growth score; provided that, for any teacher whose course ends in a State-created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. *Provided, however, that during the 2015-16 school year, while the Department*

transitions to a new computer based examination, the district shall determine whether to use the New York State Alternate Assessment (NYSAA) as the underlying assessment for such SLO. In instances where a district determines not to use the NYSAA, the district must determine whether to use SLOs based on a list of approved student assessments, or a district- or-BOCES-wide or school- or program-wide group, team, or linked results based on State/Regents assessments, or other assessments approved by the Department, as defined by the commissioner in guidance.

4. Subparagraph (iii) of paragraph (1) of subdivision (b) of section 30-3.4 of the Rules of the Board of Regents is amended, effective June 14, 2016, to read as follows:

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

5. Paragraph (2) of subdivision (b) of Section 30-3.4 of the Rules of the Board of Regents is amended, effective June 14, 2016, to read as follows:

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

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

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

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

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

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

6. Subparagraph (xii) of paragraph (2) of subdivision (d) of section 30-3.4 of the Rules of the Board of Regents is amended, effective June 14, 2016, to read as follows:

(xii) Each *subcomponent of the* observation *category* shall be evaluated on a 1-4 scale based on a State-approved rubric aligned to the New York State teaching standards and an overall score for [each] *the* observation *category* shall be generated between 1-4. *Such subcomponent scores shall incorporate all evidence collected and observed over the course of the school year.* [Multiple] *Scores for each* [observations] *subcomponent of the observation category* shall be combined using a weighted average pursuant to subparagraph (xiv) of this paragraph, producing an overall observation category score between 1-4. In the event that a teacher earns a score of 1 on all rated components of the practice rubric across all observations, a score of 0 will be assigned.

7. Subparagraph (ii) of paragraph (1) of subdivision (b) of section 30-3.5 of the Rules of the Board of Regents is amended, effective June 14, 2016, to read as follows:

(ii) for a principal where less than 30 percent of his/her students are covered under the State-provided growth measure, such principal shall have a student learning objective (SLO), on a form prescribed by the commissioner, consistent with the SLO process determined or developed by the commissioner, that results in a student growth score; provided that, for any principal whose building or program includes courses that end in a State-created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. *Provided, however, that during the 2015-16 school year, while the Department transitions to a new computer based examination, the district shall determine whether to use the New York State Alternate Assessment (NYSAA) as the underlying assessment for such SLO. In instances where a district determines not to use the NYSAA, the district must determine whether to use SLOs based on a list of approved student assessments, or a district- or-BOCES-wide or school- or program-wide group, team, or linked results based on State/Regents assessments, or other assessments approved by the Department, as defined by the commissioner in guidance.*

8. Subparagraph (iii) of paragraph (1) of subdivision (b) of section 30-3.5 of the Rules of the Board of Regents is amended, effective June 14, 2016, to read as follows:

(iii) For a principal of a building or program whose courses do not end in a State-created or administered test or where a principal growth score is not determined, districts shall use SLOs based on a list of State-approved student assessments. *SLOs set for courses in the principal's building which do not end in a State-created or administered test may incorporate district or BOCES-wide or school or program-wide results from State-created or administered tests, or other student assessments approved by the Department.*

9. A new subparagraph (iv) of paragraph (1) of subdivision (b) of section 30-3.5 of the Rules of the Board of Regents is added, effective June 14, 2016, to read as follows:

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

10. Paragraph (2) of subdivision (b) of section 30-3.5 of the Rules of the Board of Regents is amended, effective June 14, 2016, to read as follows:

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

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

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

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

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

11. Paragraph (13) of subdivision (d) of section 30-3.5 of the Rules of the Board of Regents is amended, effective June 14, 2016, to read as follows:

(13) Each *subcomponent of the* school visit *category* shall be evaluated on a 1-4 scale based on a state-approved rubric aligned to the ISLLC standards and an overall score for [each] *the* school visit *category* shall be generated between 1-4. *Such subcomponent scores must incorporate all evidence collected and observed over the course of the school year in that subcomponent.* [Multiple] *Scores for each* [observations] *subcomponent of the school visit category* shall be combined using a weighted average, producing an overall [observation] *school visit* category score between 1-4. In the event that a principal earns a score of 1 on all rated components of the practice rubric across all school visits, a score of 0 will be assigned. Weighting of Subcomponents with Principal School Visit Category. The weighting of the subcomponents within the principal school visit category shall be established locally within the following constraints:

(i)…
(ii)…
(iii)…

12. Subdivision (b) of section 30-3.11 shall be amended, effective June 14, 2016, to read as follows:

(b) Such improvement plan shall be developed by the superintendent or his or her designee in the exercise of their pedagogical judgment*, and subject to collective bargaining to the extent required under article 14 of the Civil Service Law,* and shall include, but need not be limited to, identification of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed, and, where appropriate, differentiated activities to support a teacher's or principal's improvement in those areas.

13. Subdivision (c) of section 30-3.13 of the Rules of the Board of Regents, effective June 14, 2016, is amended to read as follows:

(c) Corrective action plans may require changes to a collective bargaining agreement*, subject to collective bargaining under article 14 of the Civil Service Law*.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 11, 2016.

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above authority vested in the Regents and Commissioner to carry into effect State educational laws and policies and Ch.56, L.2015, as amended by Ch.20, L.2015, and is necessary to support the commitment made by the Legislature, the Governor, the Regents and Commissioner to ensure effective evaluation of classroom teachers and building principals. The proposed rule is necessary to provide immediate notice to districts of the additional allowable measures in the student performance category, the increased flexibility in scoring observations in the observation category and to clarify the collective bargaining requirements surrounding teacher/principal improvement plans and to clarify that corrective action plans may require changes to collective bargaining agreements, subject to negotiation under Article 14 of the Civil Service Law, while they are negotiating their annual professional performance review plans under Education Law § 3012-d for the 2016-2017 school year.

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".

The Department has continued to solicit feedback and input from the various stakeholder groups regarding the implementation of the requirements of the transition period, and of the implementation of the requirements of Subpart 30-3 of the Rules of the Board of Regents generally. The proposed amendment reflects areas where there has been consistent feedback from stakeholders requesting a revision to the regulations.

Proposed amendment

In an effort to provide districts and BOCES with greater flexibility in implementing the provisions of Education Law § 3012-d and Subpart 30-3 of the Rules of the Board of Regents, the proposed amendment makes the following changes:

- Sections 30-2.3(c) and 30-3.3(c) are amended to clarify that transition scores and ratings, calculated pursuant to Sections 30-2.14 and 30-3.17, must be provided to teachers and principals, no later than September 1st of the school year immediately following the school year for which the teacher or principal's performance is evaluated during the transition period (2015-16 through 2018-19 school years). Original final ratings for such teachers and principals must be provided by September 1st, or as soon as practicable thereafter, during the transition period. Educators whose APPRS are not based on 3-8 ELA/math State assessments or State-provided growth scores and do not receive transition scores and ratings shall continue to receive their final APPR ratings no later than September 1st. Sections 30-3.4 and 30-3.5 are amended to clarify the measures that may be used in the student performance category of a teacher's or principal's evaluation, and the methodology by which subcomponent and overall scores must be calculated in the teacher observation and principal school visit categories. Section 30-3.4 applies to teacher's evaluations under Education Law § 3012-d, and section 30-3.5 of the Regents Rules applies to principal's evaluations under Education Law § 3012-d.
- The amendments to sections 30-3.4 and 30-3.5 provide that in the first mandatory subcomponent of the student performance category of a teacher's or principal's evaluation, for a teacher or principal whose courses do not end in a State-created or administered test or where a State-provided growth score is not determined, the SLOs set for such courses may incorporate district or BOCES-wide or school or program-wide results from State-created or administered tests, or other student assessments approved by the Department. Where a course does end in a State-created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. Provided, however, that during the 2015-16 school year, while the Department transitions to a new computer based examination, the district shall determine whether to use the New York State Alternate Assessment (NYSAA) as the underlying assessment for such SLO. In instances where a district determines not to use the NYSAA, the district must determine whether to use SLOs based on a list of approved student assessments, or district- or-BOCES-wide results based on State/Regents assessments, or other assessments approved by the Department, as defined by the commissioner in guidance.
- Section 30-3.5 is amended to require districts to develop back-up SLOs for all principals whose buildings or programs contain courses that end in a State-created or administered test for which there is a State-provided growth model, to use in the event that no State-provided growth score can be generated for such principals.
- The amendments to sections 30-3.4 and 30-3.5 also provide that in the optional second subcomponent of the student performance category, if a measure based on a second State-provided growth score on a state-created or administered test is selected, this measure may incorporate district- or BOCES-wide or school- or program-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed. If a growth score based on a State-designed supplemental assessment, calculated using a State-provided or approved growth model is selected, such growth score may include district- or BOCES-wide or school- or program-wide group, team, or linked results where the State-approved growth model is capable of generating such a score.
- Sections 30-3.4 and 30-3.5 are further amended to clarify that each observation or school visit must be evaluated based on a State-approved rubric aligned to the New York State teaching standards or ISLLC standards (as applicable) and an overall score for each teacher observation category or principal school visit category subcomponent (i.e., principal/supervisor or other trained administrator, impartial independent trained evaluator(s), and trained peer observer) shall be generated between 1-4. Such teacher observation category or principal school visit category

subcomponent scores must incorporate all evidence collected and observed over the course of the school year and shall also generate scores between 1-4. Scores for each subcomponent of the observation or school visit category shall be combined using a weighted average computed within the constraints of Subpart 30-3 of the Rules of the Board of Regents, producing an overall observation or school visit category score between 1-4.

• Based on comments from the field, section 30-3.11 is amended to clarify that teacher and principal improvement plans shall be subject to collective bargaining to the extent required under Article 14 of the Civil Service Law.

• Section 30-3.13 is amended to clarify that corrective action plans may require changes to a collective bargaining agreement subject to collective bargaining under Article 14 of the Civil Service Law.

4. COSTS:

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

b. Costs to local government: Education Law section 3012-d, as added by Chapter 56 of the Laws of 2015, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES) for the 2015-2016 school year and thereafter. The amendment provides districts and BOCES with greater flexibility in their implementation of Education Law section 3012-d and does not impose any costs on local government, beyond those costs imposed by the statute.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

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

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed amendment provides school districts and boards of cooperative educational services (BOCES) with greater flexibility in implementing the provisions of Education Law §§ 3012-c and 3012-d, and Subparts 30-2 and 30-3 of the Rules of the Board of Regents consistent with feedback from stakeholders requesting revisions to the regulations. The proposed amendment provides flexibility by authorizing districts and BOCES to use additional measures in the student performance category, increased flexibility in scoring observations in the observation category, clarifying the collective bargaining requirements surrounding teacher/principal improvement plans, and clarifying that corrective action plans may require changes to collective bargaining agreements, subject to negotiation under Article 14 of the Civil Service Law. 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".

The Department has continued to solicit feedback and input from the various stakeholder groups regarding the implementation of the requirements of the transition period, and of the implementation of the requirements of Subpart 30-3 of the Rules of the Board of Regents generally. The proposed amendment reflects areas where there has been consistent feedback from stakeholders requesting a revision to the regulations.

Proposed amendment

In an effort to provide districts and BOCES with greater flexibility in implementing the provisions of Education Law §§ 3012-c and 3012-d, and Subparts 30-2 and 30-3 of the Rules of the Board of Regents, the proposed amendment makes the following changes:

• Sections 30-2.3(c) and 30-3.3(c) are amended to clarify that transition scores and ratings, calculated pursuant to Sections 30-2.14 and 30-3.17, must be provided to teachers and principals, no later than September 1st of the school year immediately following the school year for which the teacher or principal's performance is evaluated during the transition period (2015-16 through 2018-19 school years). Original final ratings for such teachers and principals must be provided by September 1st or as soon as practicable thereafter, during the transition period. Educators whose APPRs are <u>not</u> based on 3-8 ELA/math State assessments or State-provided growth scores and do not receive transition scores and ratings shall continue to receive their final APPR ratings no later than September 1st. Sections 30-3.4 and 30-3.5 are amended to clarify the measures that may be used in the student performance category of a teacher's or principal's evaluation, and the methodology by which subcomponent and overall scores must be calculated in the teacher observation and principal school visit categories. Section 30-3.4 applies to teacher's evaluations under Education Law § 3012-d, and section 30-3.5 of the Regents Rules applies to principal's evaluations under Education Law § 3012-d.

• The amendments to sections 30-3.4 and 30-3.5 provide that in the first mandatory subcomponent of the student performance category of a teacher's or principal's evaluation, for a teacher or principal whose courses do not end in a State-created or administered test or where a State-provided growth score is not determined, the SLOs set for such courses may incorporate <u>district</u> or BOCES-wide or school <u>or program-wide</u> results from State-created or administered tests, <u>or other student assessments approved by the Department. Where a course does end in a State-created or administered assessment</u> for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. <u>Provided, however, that during the 2015-16 school year, while the Department transitions to a new computer based examination, the district shall determine whether to use the New York State Alternate Assessment (NYSAA) as the underlying assessment for such SLO. In instances where a district determines not to use the NYSAA, the district must determine whether to use SLOs based on a list of approved student assessments, or district- or-BOCES-wide results based on State/Regents assessments, or other assessments approved by the Department, as defined by the commissioner in guidance.</u>

• Section 30-3.5 is amended to require districts to develop back-up SLOs for all principals whose buildings or programs contain courses that end in a State-created or administered test for which there is a State-provided growth model, to use in the event that no State-provided growth score can be generated for such principals.

• The amendments to sections 30-3.4 and 30-3.5 also provide that in the optional second subcomponent of the student performance category, if a measure based on a second State-provided growth score on a state-created or administered test is selected, this measure may incorporate district- or BOCES-wide or school- or program-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed. If a growth score based on a State-designed supplemental assessment, calculated using a State-provided or approved growth model is selected, such growth score may include district- or BOCES-wide or school- or program-wide group, team, or linked results where the State-approved growth model is capable of generating such a score.

• Sections 30-3.4 and 30-3.5 are further amended to clarify that each observation or school visit must be evaluated based on a State-approved rubric aligned to the New York State teaching standards or ISLLC standards (as applicable) and an overall score for each teacher observation category or principal school visit category subcomponent (i.e., principal/supervisor or other trained administrator, impartial independent trained evaluator(s), and trained peer observer) shall be generated between 1-4. Such teacher observation category or principal school visit category subcomponent scores must incorporate all evidence collected and observed over the course of the school year and shall also generate scores between 1-4. Scores for each subcomponent of the observation or school visit category shall be combined using a weighted average computed within the constraints of Subpart 30-3 of the Rules of the Board of Regents, producing an overall observation or school visit category score between 1-4.

• Based on comments from the field, section 30-3.11 is amended to clarify that teacher and principal improvement plans shall be subject to collective bargaining to the extent required under Article 14 of the Civil Service Law.

• Section 30-3.13 is amended to clarify that corrective action plans may require changes to a collective bargaining agreement subject to collective bargaining under Article 14 of the Civil Service Law.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

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

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

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".

The Department has continued to solicit feedback and input from the various stakeholder groups regarding the implementation of the requirements of the transition period, and of the implementation of the requirements of Subpart 30-3 of the Rules of the Board of Regents generally. The proposed amendment reflects areas where there has been consistent feedback from stakeholders requesting a revision to the regulations.

Proposed amendment

In an effort to provide districts and BOCES with greater flexibility in implementing the provisions of Education Law §§ 3012-d and Subparts 30-2 and 30-3 of the Rules of the Board of Regents, the proposed amendment makes the following changes:

• Sections 30-2.3(c) and 30-3.3(c) are amended to clarify that transition scores and ratings, calculated pursuant to Sections 30-2.14 and 30-3.17, must be provided to teachers and principals, no later than September 1st of the school year immediately following the school year for which the teacher or principal's performance is evaluated during the transition period (2015-16 through 2018-19 school years). Original final ratings for such teachers and principals must be provided by September 1st, or as soon as practicable thereafter, during the transition period. Educators whose APPRS are not based on 3-8 ELA/math State assessments or State-provided growth scores and do not receive transition scores and ratings shall continue to receive their final APPR ratings no later than September 1st. Sections 30-3.4 and 30-3.5 are amended to clarify the measures that may be used in the student performance category of a teacher's or principal's evaluation, and the methodology by which subcomponent and overall scores must be calculated in the teacher observation and principal school visit categories. Section 30-3.4 applies to teacher's evaluations under Education Law § 3012-d, and section 30-3.5 of the Regents Rules applies to principal's evaluations under Education Law § 3012-d.

• The amendments to sections 30-3.4 and 30-3.5 provide that in the first mandatory subcomponent of the student performance category of a teacher's or principal's evaluation, for a teacher or principal whose courses do not end in a State-created or administered test or where a State-provided growth score is not determined, the SLOs set for such courses may incorporate district or BOCES-wide or school or program-wide results from State-created or administered tests, or other student assessments approved by the Department. Where a course does end in a State-created or administered assessment for which there is no State-provided growth model, such assessment must be used as the underlying assessment for such SLO. Provided, however, that during the 2015-16 school year, while the Department transitions to a new computer based examination, the district shall determine whether to use the New York State Alternate Assessment (NYSAA) as the underlying assessment for such SLO. In instances where a district determines not to use the NYSAA, the district must determine whether to use SLOs based on a list of approved student assessments, or district- or-BOCES-wide results based on State/Regents

assessments, or other assessments approved by the Department, as defined by the commissioner in guidance.

• Section 30-3.5 is amended to require districts to develop back-up SLOs for all principals whose buildings or programs contain courses that end in a State-created or administered test for which there is a State-provided growth model, to use in the event that no State-provided growth score can be generated for such principals.

• The amendments to sections 30-3.4 and 30-3.5 also provide that in the optional second subcomponent of the student performance category, if a measure based on a second State-provided growth score on a state-created or administered test is selected, this measure may incorporate district- or BOCES-wide or school- or program-wide, group, team, or linked growth results using available State-provided growth scores that are locally-computed. If a growth score based on a State-designed supplemental assessment, calculated using a State-provided or approved growth model is selected, such growth score may include district- or BOCES-wide or school- or program-wide group, team, or linked results where the State-approved growth model is capable of generating such a score.

• Sections 30-3.4 and 30-3.5 are further amended to clarify that each observation or school visit must be evaluated based on a State-approved rubric aligned to the New York State teaching standards or ISLLC standards (as applicable) and an overall score for each teacher observation category or principal school visit category subcomponent (i.e., principal/supervisor or other trained administrator, impartial independent trained evaluator(s), and trained peer observer) shall be generated between 1-4. Such teacher observation category or principal school visit category subcomponent scores must incorporate all evidence collected and observed over the course of the school year and shall also generate scores between 1-4. Scores for each subcomponent of the observation or school visit category shall be combined using a weighted average computed within the constraints of Subpart 30-3 of the Rules of the Board of Regents, producing an overall observation or school visit category score between 1-4.

• Based on comments from the field, section 30-3.11 is amended to clarify that teacher and principal improvement plans shall be subject to collective bargaining to the extent required under Article 14 of the Civil Service Law.

• Section 30-3.13 is amended to clarify that corrective action plans may require changes to a collective bargaining agreement subject to collective bargaining under Article 14 of the Civil Service Law.

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

5. RURAL AREA PARTICIPATION:

The proposed amendment provides districts and BOCES with greater flexibility in their implementation of Education Law §§ 3012-c and 3012-d and Subparts 30-2 and 30-3 of the Rules of the Board of Regents. The proposed amendments are submitted in response, in part, to comments received from rural school districts and BOCES.

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

Job Impact Statement

The purpose of proposed rule is necessary to provide districts and BOCES' State-wide with a broader range of options with respect to their APPR plans through additional available measures in the student performance category, increased flexibility in scoring observations in the observation category and to clarify the collective bargaining requirements surrounding teacher/principal improvement plans and to clarify that corrective action plans may require changes to collective bargaining agreements, subject to negotiation under Article 14 of the Civil Service Law, while they are negotiating their annual professional performance review plans under Education Law § 3012-d for the 2016-2017 school year. 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

Teacher Certification in Career and Technical Education

I.D. No. EDU-26-16-00016-EP
Filing No. 577
Filing Date: 2016-06-14
Effective Date: 2016-06-14

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 additional pathway options for a Transitional A certification in the CTE subjects for candidates who meet the requirements in one of the following pathway options:

• Option G. Have a minimum of two years of experience in the CTE subject area of certificate sought and hold an industry-related credential or pass an industry accepted examination as approved by the Department and an offer of employment from a school district

• Option H. Are enrolled in an approved CTE teacher preparation program and have either a minimum of one year of related work experience and/or take and pass an industry accepted examination

• Option I. Are currently certified 7-12 grade teachers in any CTE subject area with two years of documented work experience or who hold industry-recognized credentials, where available, in the related CTE area

A Notice of Proposed Rule Making will be published in the State Register on June 29, 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 September 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 do not meet the current requirements but who possess industry experience, credentials, or are in the process of completing certification, but meet one of the three proposed new pathways, to begin teaching at the grade 7-12 level as early as possible during the 2016-2017 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 new pathways for Transitional A certificate.

Text of emergency/proposed rule: 1. New paragraphs (5), (6), and (7) are added to subdivision (b) of section 80-3.5 of the Regulations of the Commissioner of Education, effective June 14 2016, to read as follows:

(5) Option G: The requirements of this paragraph are applicable to candidates who seek an initial certificate and who hold an industry acceptable credential in a career and technical education subject and have at least two years of acceptable work experience in the certificate area to be taught or in a closely related subject area acceptable to the department. The candidate shall meet the requirements in each of the following subparagraphs:

(i) Education. The candidate shall complete at least two clock hours of course work 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 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) Industry Related Credential or Industry Accepted Examination. The candidate shall either:

(a) hold an industry related credential in the certificate area taught or in a closely related subject area acceptable to the department; or

(b) receive a passing score on an industry accepted career and technical examination that demonstrates mastery in the career and technical education subject for which a certificate is sought or a closely related area as approved by the department through a request for qualifications process.

(iv) Experience. The candidate shall have at least two years of satisfactory work experience in the career and technical education subject for which a certificate is sought or a closely related subject area, as determined by the Commissioner.

(v) 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 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 5 through 12 in a public or nonpublic school or BOCES.

(6) Option H: The requirements of this paragraph are applicable to candidates who seek an initial certificate and who are enrolled in an approved career and technical education program registered pursuant to section 52.21 of this Title, or its equivalent in the certificate area to be taught or in a closely related subject area acceptable to the department; and have either at least one year of satisfactory experience in the career and technical area to be taught or in a closely related area or receive a passing score on an industry accepted career and technical examination that demonstrates mastery in the career and technical education subject for which a certificate is sought or a closely related area as approved by the department through a request for qualifications process. The candidate shall meet the requirements in each of the following subparagraphs:

(i) Education.

(a) The candidate shall complete at least two clock hours of course work 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 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; and

(b) the candidate shall be enrolled in an approved career and technical education program registered pursuant to section 52.21 of this Title.

(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 and/or Examination. The candidate shall either:

(a) have at least one year of satisfactory work experience in the career and technical education subject for which a certificate is sought or a closely related area, as determined by the Commissioner; or

(b) receive a passing score on an industry accepted career and technical examination that demonstrates mastery in the career and technical education subject for which a certificate is sought or a closely related area as approved by the department through a request for qualifications process.

(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 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 5 through 12 in a public or nonpublic school or BOCES.

(7) Option I: The requirements of this paragraph are applicable to candidates who seek an initial certificate and who are currently certified as a teacher in grades 7-12 in the career and technical education subject to be taught or in a closely related subject area acceptable to the department, and who either: hold an industry related credential the career and technical education subject to be taught or in a closely related subject area acceptable to the department or have two years of satisfactory experience in the certificate area sought or a closely related subject area, as determined by the Commissioner. The candidate shall meet the requirements in each of the following subparagraphs:

(i) Education. The candidate shall complete at least two clock hours of course work 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) Certification as a Career and Technical Education Teacher in grades 7-12. The candidate shall hold certification as a teacher in grades 7-12 in the career and technical education subject to be taught or in a closely related subject area pursuant to Part 80 of this Title, that is acceptable to the department.

(iv) Experience or Industry Related Credential. The candidate shall either:

(a) hold an industry related credential in the certificate area sought or in a related area, as determined by the Department; or

(b) have at least two years of documented and satisfactory work experience in the career and technical education subject for which a certificate is sought, or a related area, as determined by the Commissioner.

(v) 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 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 5 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 September 11, 2016.

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

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 three new certification pathway options for candidates to obtain a Transitional A certificate who do not meet the current requirements but who possess industry experience, credentials, or are in the process of completing certification in a CTE field to address

concerns raised by school districts and Board of Cooperative Educational Services (BOCES) that have expressed difficulty in filling CTE positions.

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.

In addition, at the May 2016 Board of Regents meeting, the Board adopted by Emergency action a new pathway option for those issued a full license to teach in licensed private career schools and who have two years of teaching experience under such license, to qualify for a Transitional A certificate. If adopted at the September 2016 Board of Regents meeting, this will allow those candidates to teach CTE during the 2016-2017 school year.

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 at the May 2016 Board meeting, this amendment would create additional pathways for those individuals who do not meet current requirements.

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 who possess industry experience, credentials, or are in the process of completing certification in a CTE field 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. Candidates must meet one of the following requirements:

• Have a minimum of two years of work experience in the CTE subject area of the certificate sought and hold an industry-related credential, where available, or pass an industry accepted examination as approved by the Department and have an employment and support commitment

• Are enrolled in an approved CTE teacher preparation program and have either a minimum of one year of related work experience and/or take and pass an industry accepted examination and have an employment and support commitment

• Are currently certified 7-12 grade teachers in any CTE subject area with two years of documented work experience or who hold industry-recognized credentials, where available, in the related CTE area and have an employment and support commitment

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 purpose of the proposed amendment is to address concerns raised by school districts and Board of Cooperative Educational Services (BOCES), and particularly the New York City school district, wherein they have expressed difficulty filling Career and Technical Education (CTE) positions at the secondary level. The proposed amendment will create three new pathway options for candidates to obtain a Transitional A certificate who do not meet the current requirements but who possess industry experience, credentials, or are in the process of completing certification in a CTE field.

The amendment does not impose any new 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:

If adopted by the Board of Regents at the September 2016 Board of Regents meeting, commencing with the 2016-2017 school year, the proposed amendment creates three new pathway options to address immediate shortage areas for candidates who meet one of the following three requirements:

• Have a minimum of two years of work experience in the CTE subject area of the certificate sought and hold an industry-related credential, where available, or pass an industry accepted examination as approved by the Department and have an employment and support commitment

• Are enrolled in an approved CTE teacher preparation program and have either a minimum of one year of related work experience and/or take and pass an industry accepted examination and have an employment and support commitment

• Are currently certified 7-12 grade teachers in any CTE subject area with two years of documented work experience or who hold industry-recognized credentials, where available, in the related CTE area and have an employment and support commitment

2. COMPLIANCE REQUIREMENTS:

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.

In addition, at the May 2016 Board of Regents meeting, the Board adopted by Emergency action a new pathway option for those issued a full license to teach in licensed private career schools and who have two years of teaching experience under such license, to qualify for a Transitional A certificate. If adopted at the September 2016 Board of Regents meeting, this will allow those candidates who qualify to teach CTE during the 2016-2017 school year and address immediate shortages.

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 at the May 2016 Board meeting, this amendment would create three additional pathways for those who do not meet current requirements but who possess industry experience, credentials, or are in the process of completing certification in a CTE field.

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, credentials, or who are in the process of completing certification 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. The proposed pathways allow candidates to meet one of the following requirements:

• Have a minimum of two years of work experience in the CTE subject area of the certificate sought and hold an industry-related credential, where available, or pass an industry accepted examination as approved by the Department and have an employment and support commitment

• Are enrolled in an approved CTE teacher preparation program and have either a minimum of one year of related work experience and/or take and pass an industry accepted examination and have an employment and support commitment

• Are currently certified 7-12 grade teachers in any CTE subject area with two years of documented work experience or who hold industry-recognized credentials, where available, in the related CTE area and have an employment and support commitment

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

There are no additional compliance costs on local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on districts or BOCES.

6. MINIMIZING ADVERSE IMPACT:

The rule seeks to address the issue school districts and BOCES have expressed relating to difficulties finding certified teachers to serve as CTE teachers at the secondary level. The proposed amendment seeks to provide flexibility to these school districts by providing additional certification pathways for teachers in CTE in grades 7-12.

7. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

If adopted by the Board of Regents at the September 2016 Board of Regents meeting, commencing with the 2016-2017 school year, the proposed amendment creates three new pathway options for candidates to obtain a Transitional A certificate who do not meet the current requirements but who possess industry experience, credentials, or are in the process of completing certification in a CTE field. This would allow those who qualify to teach CTE subjects at the secondary level.

This amendment applies to all districts and BOCES in New York, including those 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:

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 currently 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.

In addition, at the May 2016 Board of Regents meeting, the Board adopted by Emergency action a new pathway option for those issued a full license to teach in licensed private career schools and who have two years of teaching experience under such license, to qualify for a Transitional A certificate. If adopted at the September 2016 Board of Regents meeting, this will allow those candidates to teach CTE during the 2016-2017 school year.

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 at the May 2016 Board meeting, 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, credentials, or who are in the process of completing certification 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. Candidates must meet one of the following requirements:

- Have a minimum of two years of work experience in the CTE subject area of the certificate sought and hold an industry-related credential, where available, or pass an industry accepted examination as approved by the Department and have an employment and support commitment
- Are enrolled in an approved CTE teacher preparation program and have either a minimum of one year of related work experience and/or take and pass an industry accepted examination and have an employment and support commitment
- Are currently certified 7-12 grade teachers in any CTE subject area with two years of documented work experience or who hold industry-recognized credentials, where available, in the related CTE area and have an employment and support commitment

3. COSTS:

The proposed amendment does not impose any costs on candidates for the Transitional A certificate, school districts or BOCES across the State, including those located in rural areas of the State.

4. MINIMIZING ADVERSE IMPACT:

The rule seeks to provide additional flexibility to school districts by addressing the issue raised by school districts who were having difficulty finding CTE teachers to fill positions at the secondary level, as this concern was raised by the field.

5. RURAL AREA PARTICIPATION:

Copies of the rule have been provided to Rural Advisory Committee for review and comment.

Job Impact Statement

The purpose of proposed amendment is to address concerns raised by school districts and Board of Cooperative Educational Services (BOCES) that have expressed difficulty in filling Career and Technical Education (CTE) positions at the secondary level. The proposed amendment will create three new pathway options for candidates to obtain a Transitional A certificate who do not meet the current requirements but who possess industry experience, credentials, or are in the process of completing certification in a CTE field.

Because the proposed amendment seeks to address an issue raised by the field in employing CTE teachers at the secondary level, 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, and no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Preschool Special Education Programs and Services

I.D. No. EDU-45-15-00014-A

Filing No. 583

Filing Date: 2016-06-14

Effective Date: 2016-06-29

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

Action taken: Amendment of sections 200.4, 200.16 and 200.20 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), (20), 308(not subdivided), 3214(3), 4401(5), 4402, 4403(3), 4410(3) and (10)

Subject: Preschool special education programs and services.

Purpose: To enact requirements relating to appointment of 1:1 aide by Committee on Special Education (CSE); Special Education Itinerant Services (SEIS); related services; and standards for approved preschool providers.

Text of final rule: 1. Paragraph (3) of subdivision (d) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective June 29, 2016, to read as follows:

(3) Consideration of special factors. The CSE shall:

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) consider whether the student requires assistive technology devices and services, including whether the use of school-purchased assistive technology devices is required to be used in the student's home or in other settings in order for the student to receive a free appropriate public education; [and]

(vi) include a statement in the IEP if, in considering the special factors described in this paragraph, the committee has determined a student needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the student to receive a free appropriate public education*; and*

(vii) prior to the IEP recommendation of assignment of additional supplementary school personnel (or one-to-one aide) to meet the individualized needs of a student with a disability, consider:

(a) the management needs of the student that would require a significant degree of individualized attention and intervention;

(b) the skills and goals the student would need to achieve that will reduce or eliminate the need for the one-to-one aide;

(c) the specific support (e.g., assistance with personal hygiene or behaviors that impede learning) that the one-to-one aide would provide for the student;

(d) other supports, accommodations and/or services that could support the student to meet these needs (e.g., behavioral intervention plan; environmental accommodations or modifications; instructional materials in alternate formats; assistive technology devices; peer-to-peer supports);

(e) the extent (e.g., portions of the school day) or circumstances (e.g., for transitions from class to class) the student would need the assistance of a one-to-one aide;

(f) staff ratios in the setting where the student will attend school;

(g) the extent to which assignment of a one-to-one aide might enable the student to be educated with nondisabled students and, to the maximum extent appropriate, in the least restrictive environment;

(h) any potential harmful effect on the student or on the quality of services that he or she needs that might result from the assignment of a one-to-one aide; and

(i) the training and support that shall be provided to the one-to-one aide to help the one-to-one aide understand the student's disability-related needs, learn effective strategies for addressing the student's needs, and acquire the necessary skills to support the implementation of the student's individualized education program.

Nothing in this subparagraph shall be construed to prohibit or limit the assignment of shared one-to-one aides at the discretion of the school to meet the individualized needs of students whose IEPs include the recommendation for one-to-one aides. The duties of a teacher aide or teaching assistant providing individualized support to a student with a disability shall be consistent with the duties prescribed pursuant to section 80-5.6 of this Title.

2. Subparagraph (ii) of paragraph (3) of subdivision (i) of section 200.16 of the Regulations of the Commissioner of Education is amended, effective June 29, 2016, to read as follows:

(ii) Special education itinerant services as defined in section 4410(1)(k) of Education Law are services provided by a certified special education teacher of an approved program on an itinerant basis at a site determined by the board including but not limited to an approved or licensed prekindergarten or head start program; the student's home; a hospital; a State facility; or a child care location as defined in section 4410 of the Education Law. If the board determines that documented medical or special needs of the preschool student indicate that the student should not be transported to another site, the student shall be entitled to receive special education itinerant services in the preschool student's home. Such services shall be for the purpose of providing specialized individual or group instruction and/or indirect services to preschool students with disabilities. Indirect services means consultation provided by a certified special education teacher to assist the child's teacher in adjusting the learning environment and/or modifying their instructional methods to meet the individual needs of a preschool student with a disability who attends an early childhood program. An early childhood program, for purposes of this paragraph, means a regular preschool program or day care program approved or licensed by a governmental agency in which a child under the age of five attends. Special education itinerant services shall be provided to a preschool student with a disability for whom such services have been recommended as follows:

(a) the service shall be recommended by the Committee on Preschool Special Education and shall be included in the student's individualized education program. *Such recommendation shall identify the setting where such services would be delivered; specify the frequency, duration, intensity and location of direct special education itinerant services; and, for students who attend a regular early childhood program, specify, if any, the frequency, duration and location for the provision of indirect special education itinerant services as such term is defined in this subparagraph;*

(b) . . .

(c) . . .

(d) . . .

(e) . . .

3. Subparagraph (iii) of paragraph (3) of subdivision (i) of section 200.16 is amended, effective June 29, 2016, as follows:

(iii) Special classes shall be provided on a half-day or full-day basis pursuant to section 200.1(p), (q), and (v) of this Part and in accordance with section 200.6(h)(2) and (3) or section 200.9(f)(2)(x) of this Part and shall assure that:

(a) . . .

(b) . . .

(c) such services shall be provided for not less than two and one half hours per day, two days per week; and

(d) consistent with the requirements of section 200.20(a)(9) of this Part, the special class shall include instructional services and related services, as specified in the student's individualized education program.

4. Subdivision (b) of section 200.20 is amended, effective June 29, 2016, as follows:

(b) Preschool programs funded pursuant to section 4410 of the Education Law shall also meet the following additional requirements:

(1) . . .

(2) . . .

(3) Each approved preschool program shall ensure that:

(i) . . .

(ii) the executive director or person assigned to perform the duties of a chief executive officer shall reside within a reasonable geographic distance from the program's administrative, instructional and/or evaluation sites to ensure appropriate oversight of the program; and

(iii) if paid as a full time executive director, the executive director shall be employed in a full-time, full-year position and shall not engage in activity that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

(4) Each program approved to provide special education itinerant services shall ensure that such service is provided, consistent with the recommendations in the students' individualized education programs, as an itinerant service to the preschool student at a regular early childhood program or the student's home or other child care location identified by the parent, consistent with the requirements of section 200.16(i)(3)(ii) of this Part.

(5) Each approved preschool program shall ensure that the educational director, if hired on or after September 1, 2016, shall possess a NYS teaching certificate pursuant to section 80-3.3 of this Title valid for classroom teaching services to students with disabilities, birth-grade 2, or certification in early childhood education, or possesses New York State certification or licensure in speech-language pathology, psychology, occupational or physical therapy or another related services field as such term is defined in section 200.1(qq) of this Part; and, consistent with the requirements of section 80-3.10 of this Title, shall hold New York State certification as a School Building Leader or School District Leader or School Administrator/Supervisor. Nothing in this paragraph shall require that an approved preschool program hire an educational director in addition to the executive director, when the executive director otherwise provides the on-site direction of the program.

(6) Make-up of missed services. Each preschool provider shall, consistent with Department guidelines, ensure the make-up of missed services occurs, consistent with the duration and location specified in the IEP, within 30 days of the missed session unless there is a documented child-specific reason why the make-up session could not be provided within 30 days.

(7) Program standards for instruction of preschool students with disabilities. Each approved provider shall, as applicable, ensure that preschool students with disabilities receive instruction and positive behavioral supports that are based on peer-reviewed or evidence-based practices and consistent with the standards in this paragraph.

(i) Instructional standards for approved preschool special class programs.

(a) By not later than September 1, 2017, providers shall adopt and implement curricula aligned with the New York State Prekindergarten Learning Standards, which ensures continuity with instruction in the early elementary grades; and shall provide early literacy and emergent reading programs based on developmentally appropriate, effective and evidence-based instructional practices.

(b) The instructional program for preschool students with disabilities shall be based on the ages, interests, strengths and needs of the children.

(c) Procedures shall be implemented to promote the active engagement of parents and/or guardians in the education of their children. Such procedures shall include support to children and their families for a successful transition into kindergarten.

(ii) Program standards for positive behavioral supports for approved preschool special class programs.

(a) By not later than September 1, 2017, providers shall establish and implement a program-wide system of positive evidence-based practices to support social-emotional competence and teach social-emotional skills to preschool students, which shall include:

(1) universal supports for all children through nurturing and responsive relationships and high quality environments;

(2) practices that are targeted social-emotional strategies to prevent problem behaviors; and

(3) practices related to individualized intensive interventions.

(b) Except as provided pursuant to section 201.8 of this Title, no preschool student with a disability may be suspended, expelled or otherwise removed by the provider from an approved preschool special education program or service because of the student's behavior prior to the transfer of the student to another approved program recommended by the committee on preschool special education.

(iii) Progress Monitoring. Approved preschool special education programs shall conduct regular progress monitoring of student achievement data over time to adjust, as appropriate, the student's instructional program and, as necessary, to request meetings of the CPSE to consider changes to the student's individualized education program. The program shall provide regular written reports of student progress to the student's parent and committee on preschool special education, consistent with frequency or timetable for such periodic reports on the progress the student is making toward the annual goals as identified in the student's individualized education program.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 200.4(d)(3) and 200.20(b)(7).

Revised rule making(s) were previously published in the State Register on April 6, 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

Revised Regulatory Impact Statement

Since publication of a Notice of Revised Rule Making in the State Register on April 6, 2016, the following non-substantial revisions were made:

200.4(d)(3), relating to assignment of an individual aide to a student with a disabilities, is revised to: insert an "or" before supplementary school personnel to make it clearer that a "one-to-one aide" means assignment of additional supplementary school personnel to meet a student's individual needs.

200.20(b)(7)(i)(a) is revised to substitute New York State Pre-Kindergarten Foundation for Common Core to the New York State Pre-kindergarten Learning Standards to conform with current terminology.

These revisions require that Needs and Benefits, Costs, Local Government Mandates, and Compliance Schedule sections of previously published Regulatory Impact Statement be revised to read as follows:

NEEDS AND BENEFITS:

At the April 2015 Regents meeting, SED staff discussed data on outcomes for preschool students with disabilities, including a federal report on suspensions and expulsions of preschool students. SED recommended policy changes to enhance the quality of preschool special education instruction and behavioral supports, improve efficient use of staff resources, improve effectiveness, coordination and continuity of special education services and support inclusion of preschool students with disabilities in regular early childhood programs and activities and in classes with nondisabled peers.

Consistent with the April discussion, the amendments include the following policy changes to improve outcomes for preschool students with disabilities, ages 3-5:

- amends § 200.4(d)(3) to require Committees on Special Education (CSE) and Committees on Preschool Special Education (CPSE) to make certain considerations prior to determining a student needs a one-to-one aide;
- amends § 200.16(i)(3)(ii)(a) to require the CPSE's recommendation, included in a student's IEP, identify the site setting where services would be delivered; specify frequency, intensity, duration and location of direct special education itinerant services (SEIS); and, for students attending a regular early childhood program, specify if any, frequency, duration and location for provision of indirect SEIS;
- amends § 200.16(i)(3)(iii)(d) to clarify the special class shall include instructional and related services;
- amends § 200.20(b) to require that each approved preschool program:

o has an appropriately qualified educational director;

o ensures make-up of missed services consistent with Department guidelines and student's IEP;

o provides instruction in Prekindergarten Learning Standards, early literacy and emergent reading programs;

o provides instruction based on ages, interests, strengths and needs of children;

o ensures active engagement of parents/guardians in their children's education;

o establishes/implements program-wide system of positive, evidence-

based practices to support social-emotional competence and teach social-emotional skills to preschool students;

o prohibits suspension, expulsion or removal of a preschool child from a special education program/services because of behavior, until the appropriate transfer of the child can be arranged by the CPSE; and

o conducts progress monitoring of student achievement data and regular reports of students' progress to the students' parents and to CPSEs.

COSTS:

(a) Costs to State government: None.

(b) Costs to local governments: None. No additional costs for CSEs and CPSEs to make certain considerations under § 200.4(d)(3) prior to determining a student needs a one-to-one aide, since these considerations would be made at student's initial/annual review IEP meetings.

(c) Costs to regulated parties: No additional costs related to provision in § 200.16(i)(3)(ii) and (iii) because State law requires that SEIS be provided on an itinerant basis at the site setting recommended by CPSE and existing regulations require that special class providers implement IEPs of students admitted to the program, including related services.

No additional costs for hiring educational directors who meet qualifications for education directors of approved preschool programs in § 200.20(b)(5), since these qualifications are consistent with State certification requirements and qualifications for prekindergarten/universal prekindergarten programs and there is no requirement that programs hire additional staff.

No additional costs for requiring in § 200.20(b)(6) that providers ensure make-up of missed services consistent with duration, intensity and location specified in the IEP. Tuition costs established for such programs include consideration of costs necessary to ensure students' IEPs are implemented.

Requiring in § 200.20(b)(7) that approved programs provide instruction in Prekindergarten Learning Standards, early literacy and emergent reading programs; provide instruction based on the ages, interests, strengths and needs of the children; ensure the active engagement of parents and/or guardians in the education of their children; and establish and implement a program wide system of positive, evidence-based practices to support social-emotional competence and teach social-emotional skills to preschool students may require programs to adjust their current instructional and behavioral support systems. It is feasible that providers can adjust their programs to meet these standards without additional professional development. For those seeking professional development/support, resources are posted on SED's website that teachers and others can access at no cost and SED is providing through its funded technical assistance networks, professional development at no cost to providers to assist them to adjust their policies and practices consistent with the standards established. The amendments do not require additional staffing, but may require some approved providers to use existing resources differently to ensure the instructional and behavioral support standards are provided to preschool students with disabilities.

Because providers would continue to be reimbursed for providing special education services, no cost to providers is anticipated for the prohibition in § 200.20(b)(6)(ii)(b) of the suspension, expulsion or removal of a preschool child from a special education program or services because of behavior until the appropriate transfer of the child can be arranged by the CPSE.

No costs for requiring in § 200.20(b)(7)(iii) that preschool special education providers conduct progress monitoring of student achievement data and regular reports of students' progress to the students' parents and to the CPSEs, since this requirement is consistent with existing requirement in Commissioner's Regulation § 200.7(c)(4) that approved programs provide an educational progress report on each student and other data or reports to the referring district or agency.

(d) Costs to SED for implementation and continuing compliance: None.

LOCAL GOVERNMENT MANDATES:

The amendments require that each approved preschool program:

- have an appropriately qualified educational director;
- ensure make-up of missed services consistent with Department guidelines and student's IEP;
- provide instruction in Prekindergarten Learning Standards, early literacy and emergent reading programs;
- provide instruction based on ages, interests, strengths and needs of children;
- ensure active engagement of parents and/or guardians in education of their children;
- establish/ implements program-wide system of positive, evidence-based practices to support social-emotional competence and teach social-emotional skills to preschool students; and
- prohibit suspension, expulsion or removal of preschool child from special education program/services because of behavior until appropriate transfer of child can be arranged by CPSE.

The amendments also require certain considerations be made by the CPSE or CSE prior to determining that a student needs a one-to-one aide, including:

- management needs of the student that would require a significant degree of individualized attention and intervention;
- skills and goals the student would need to achieve that will reduce or eliminate the need for the one-to-one aide;
- specific support (e.g., assistance with personal hygiene or behaviors that impede learning) that the one-to-one aide would provide the student;
- other supports, accommodations and/or services that could support the student to meet these needs (e.g., behavioral intervention plan; environmental accommodations or modifications; instructional materials in alternate formats; assistive technology devices; peer-to-peer supports);
- extent (e.g., portions of the school day) or circumstances (e.g., for transitions from class to class) the student would need the assistance of a one-to-one aide;
- staff ratios in the setting where the student will attend school;
- extent to which assignment of a one-to-one aide might enable the student to be educated with nondisabled students and, to the maximum extent appropriate, in the least restrictive environment;
- any potential harmful effect on the student or on the quality of services that he or she needs that might result from the assignment of a one-to-one aide; and
- training and support that shall be provided to the one-to-one aide to help the one-to-one aide understand the student's disability-related needs, learn effective strategies for addressing the student's needs, and acquire the necessary skills to support the implementation of the student's individualized education program.

In addition, the amendments clarify that:

- special class programs shall include instructional services and related services as specified in students'IEPs;
- SEIS recommendations in the IEP must specify the setting and frequency, duration, location and intensity for such services; and
- SEIS must be provided consistent with IEPs as an itinerant service to the preschool student at a regular early childhood program or the student's home or other child care location identified by the parent.

COMPLIANCE SCHEDULE:

The amendments generally become effective on July 1, 2016, with certain requirements delayed for required implementation to provide sufficient time for preschool providers to benefit from professional development offered by SED and to implement the new instructional and behavioral standards, as follows:

- 200.20(b)(5) provides that the requirement that approved preschool program providers ensure that educational directors, hired on or after September 1, 2016, to hold certain specified certificates, licenses or certification, as specified in the regulation;
- 200.20(b)(7)(i)(a) requires approved preschool special class program providers to adopt and implement curricula aligned with the New York State Prekindergarten Learning Standards and other instructional standards specified in the regulation by not later than September 1, 2017;
- section 200.20(b)(7)(ii)(a) requires providers to establish and implement a program-wide system of positive evidence-based practices to support social-emotional competence and teach social-emotional skills to preschool students, including supports and practices as specified in the regulation, by not later than September 1, 2017.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Revised Rule Making in the State Register on April 6, 2016, non-substantial revisions have been made to the proposed rule as described in the Revised Regulatory Impact Statement submitted herewith.

These changes require that the Compliance Requirements section of the previously published Regulatory Flexibility Analysis be revised to read as follows:

2. COMPLIANCE REQUIREMENTS:

The proposed amendment in necessary to implement Regents policy changes to improve outcomes for preschool students with disabilities, ages 3-5, and includes the following changes:

- amends § 200.4(d)(3) to require Committees on Special Education (CSE) and Committees on Preschool Special Education (CPSE) to make certain considerations prior to determining that a student needs a one-to-one aide;
- amends § 200.16(i)(3)(ii)(a) to require that the CPSE's recommendation, included in a student's IEP, identify the site setting where services would be delivered; specify the frequency, intensity, duration and location of direct special education itinerant services (SEIS); and, for students who attend attending a regular early childhood program, specify if any, the frequency, duration and location for the provision of indirect SEIS;
- amends § 200.16(i)(3)(iii)(d) to clarify the special class shall include instructional and related services;
- amends § 200.20(b) to require that each approved preschool program:

o has an appropriately qualified educational director;

o ensures make-up of missed services consistent with Department guidelines and student's IEP;
o provides instruction in the Prekindergarten Learning Standards, early literacy and emergent reading programs;
o provides instruction based on the ages, interests, strengths and needs of the children;
o ensures the active engagement of parents and/or guardians in the education of their children;
o establishes and implements a program wide system of positive, evidence-based practices to support social-emotional competence and teach social-emotional skills to preschool students;
o prohibits the suspension, expulsion or removal of a preschool child from a special education program or services because of behavior until the appropriate transfer of the child can be arranged by the Committee on Preschool Special Education (CPSE); and
o conducts progress monitoring of student achievement data and regular reports of students' progress to the students' parents and to the CPSEs.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Revised Rule Making in the State Register on April 6, 2016, substantial revisions have been made to the proposed rule as described in the Revised Regulatory Impact Statement submitted herewith.

These changes require that the Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services and Compliance Costs sections of the previously published Rural Area Flexibility Analysis be revised to read as follows:

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

The proposed amendment is necessary to implement Regents policy changes to improve outcomes for preschool students with disabilities, ages 3-5, and includes the following policy changes:

• amends section 200.4(d)(3) to require Committees on Special Education (CSE) and Committees on Preschool Special Education (CPSE) to make certain considerations prior to determining that a student needs a one-to-one aide;
• amends section 200.16(i)(3)(ii)(a) to require that the CPSE's recommendation, included in a student's IEP, identify the site setting where services would be delivered; specify the frequency, intensity, duration and location of direct special education itinerant services (SEIS); and, for students who attend attending a regular early childhood program, specify if any, the frequency, duration and location for the provision of indirect SEIS;
• amends section 200.16(i)(3)(iii)(d) the special class shall include instructional and related services;
• amends section 200.20(b) to require that each approved preschool program:
o has an appropriately qualified educational director;
o ensures make-up of missed services consistent with Department guidelines and student's IEP;
o provides instruction in the Prekindergarten Learning Standards, early literacy and emergent reading programs;
o provides instruction based on the ages, interests, strengths and needs of the children;
o ensures the active engagement of parents and/or guardians in the education of their children;
o establishes and implements a program wide system of positive, evidence-based practices to support social-emotional competence and teach social-emotional skills to preschool students;
o prohibits the suspension, expulsion or removal of a preschool child from a special education program or services because of behavior until the appropriate transfer of the child can be arranged by the Committee on Preschool Special Education (CPSE); and
o conducts progress monitoring of student achievement data and regular reports of students' progress to the students' parents and to the CPSEs.

3. COMPLIANCE COSTS:

The proposed amendments do not impose any costs on school districts in rural areas. There will be no additional costs for CSEs and CPSEs to make certain considerations under § 200.4(d)(3) prior to determining a student needs a one-to-one aide, since these considerations would be made at student's initial/annual review IEP meetings. There will be no additional costs related to provision in § 200.16(i)(3)(ii) and (iii), because State law already requires that SEIS be provided on an itinerant basis at the child care location selected by parent, and existing regulations already require that special class providers implement the IEPs of students admitted to the program, which include related services in the student's IEPs. The remaining provisions in the proposed amendments are generally applicable to approved SEIS providers and approved preschool programs for preschool children with disabilities funded pursuant to Education Law section 4410, and do not impose any costs on school districts in rural areas.

There will be no additional costs for hiring educational directors who meet the qualifications for education directors of approved preschool programs in § 200.20(b)(5), since these qualifications are consistent with State certification requirements and qualifications for prekindergarten/universal prekindergarten programs and there is no requirement that programs hire additional staff.

There will be no additional costs for requiring in § 200.20(b)(6) that providers ensure make-up of missed services consistent with duration, intensity and location specified in the IEP. Tuition costs established for such programs include consideration of costs necessary to ensure students' IEPs are implemented.

Requiring in § 200.20(b)(7) that approved programs provide instruction in Prekindergarten Learning Standards, early literacy and emergent reading programs; provide instruction based on the ages, interests, strengths and needs of the children; ensure the active engagement of parents and/or guardians in the education of their children; and establish and implement a program wide system of positive, evidence-based practices to support social-emotional competence and teach social-emotional skills to preschool students may require programs to adjust their current instructional and behavioral support systems. It is feasible that providers can adjust their programs to meet these standards without additional professional development. For those seeking professional development/support, SED has resources posted on its website that teachers and others can access at no cost and SED is providing through its funded technical assistance networks, professional development at no cost to the providers to assist them to adjust their policies and practices consistent with the standards established. The amendments do not require additional staffing, but may require some approved providers to use existing resources differently to ensure the instructional and behavioral support standards are provided to preschool students with disabilities.

Because providers would continue to be reimbursed for providing special education services, there is no cost anticipated for providers for the proposed prohibition in § 200.20(b)(6)(ii)(b) of the suspension, expulsion or removal of a preschool child from a special education program or services because of behavior until the appropriate transfer of the child can be arranged by the CPSE.

There will be no costs for requiring in § 200.20(b)(7)(iii) that preschool special education providers conduct progress monitoring of student achievement data and regular reports of students' progress to the students' parents and to the CPSEs, since this requirement is consistent with existing requirement in Commissioner's Regulation § 200.7(c)(4) that approved programs provide an educational progress report on each student and other data or reports to the referring district or agency.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on April 6, 2016, non-substantial revisions have been made to the proposed rule as described in the Revised Regulatory Impact Statement submitted herewith.

The proposed amendment in necessary to implement Regents policy changes to enhance the quality of preschool special education instruction and behavioral supports, improve efficient use of staff resources, improve effectiveness, coordination and continuity of special education services and support inclusion of preschool students with disabilities in regular early childhood programs and activities and in classes with nondisabled peers. The proposed amendment, as revised, will not have an adverse impact on jobs and employment opportunities in New York State. Because it is evident from the nature of the revised proposed amendment that it will not adversely 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.

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 Revised Rule Making in the State Register on April 6, 2016, the State Education Department (SED) received the following comments on the proposed amendment.

One-to-One Aides

COMMENT:

Commenters supported the revised amendment to add considerations of the extent to which a 1:1 aide might enable a student to be educated with nondisabled students and in the least restrictive environment, behaviors that impede learning and training needed by the 1:1 aides. Recommendations were made that NYSED provide training to special education administrators to understand their responsibilities.

DEPARTMENT RESPONSE:

Comments are supportive and therefore no response is necessary.

COMMENT:

One commenter recommended that the rule be revised to replace the

term 1:1 aide with "IEP-recommended assistant or aide" because the term "one-to-one aide" is not consistent with the concept of a shared assistant or aide.

DEPARTMENT RESPONSE:

The proposed regulation clarifies that the term "1:1 aide" means the assignment of supplementary school personnel to meet the individualized needs of a student with a disability. Supplementary school personnel are defined in section 200.1(hh) of the Regulations of the Commissioner of Education and mean a teacher aide or a teaching assistant as described in section 80-5.6(a) through (d). Nothing in the proposed rule would prohibit an individual school district from using another term to describe this service such as "IEP-recommended assistant or aide". Moreover, a school may determine that the same 1:1 aide can meet the individualized needs of more than one student, provided that such shared services are consistent with each student's IEP.

COMMENT:

Require that the IEP specify the maximum number of students that can be shared simultaneously with the aide/assistant, so long as the needs of the students can be adequately met, and document ratios in the IEP.

DEPARTMENT RESPONSE:

The school must implement the IEP recommendation to meet a student's individualized needs. A school may determine that the same 1:1 aide can meet the individualized needs of more than one student, provided that such shared services are consistent with each student's IEP.

COMMENT:

Regulations contemplate only select instances during the school day when a 1:1 aide would be warranted. Reaffirm that all factors listed must be considered.

DEPARTMENT RESPONSE:

There is nothing in the proposed rule that would contemplate that 1:1 aide services only be available for portions of the school day.

The proposed rule requires that each of the considerations outlined in the rule be made.

COMMENT:

Unclear whether the provisions of the proposal extend to preschool, as section 200.4 applies to school-age students.

DEPARTMENT RESPONSE:

Section 200.4 applies to all students with disabilities, including preschool students with disabilities, except where such requirements are inconsistent with the requirements in section 200.16. Section 200.16(e)(3) states that the IEP recommendation shall be developed in accordance with section 200.4(d)(2), (3) and (4). The proposed rule relating to 1:1 aides is in section 200.4(d)(3), and therefore applies to preschool students with disabilities.

Provision of SEIS

COMMENT:

Authorize providers to bill for indirect SEIS in 30-minute intervals based on a cumulative weekly total, as general education teachers aren't available for a full 30-minute session during the school day.

DEPARTMENT RESPONSE:

Comment is beyond the scope of proposed regulations and therefore no comment is warranted.

COMMENT:

Committee on Preschool Special Education (CPSE) chairpersons should receive training on indirect SEIS and new requirements regarding the IEP. Recommend NYSED encourage use of indirect SEIS when promoting integration.

DEPARTMENT RESPONSE:

The Department will issue guidance on the proposed regulations when approved by the Board of Regents. Moreover, the availability of indirect SEIS is not new and is part of the new CPSE chairperson training delivered by the State's special education technical assistance providers.

COMMENT:

The proposed rule should be revised to further define what type of setting is included under each possible location (regular early childhood program, student's home, other child care location chosen by the parent) in 200.20(b)(4). CPSE chairs have inconsistent interpretations of "other child care location" and the difference between site and setting. Provide sufficient phase in time so that current IEPs would not be required to be amended to meet this requirement.

DEPARTMENT RESPONSE:

The settings listed in the regulations are self-explanatory or, in the case of "child care location", clearly defined in section 4410 of the Education Law to mean "a child's home or a place where care for less than twenty-four hours a day is provided on a regular basis and includes, but is not limited to, a variety of child care services such as day care centers, family day care homes and in-home care by persons other than parents." When adopted, the regulations will become effective for IEPs developed on or after the effective date of the proposed regulation. Retroactive changes to IEPs will not be required.

COMMENT:

Include a statement authorizing CPSE chairs to identify an alternate location, mutually agreed upon by the parent, where SEIS could be provided only when the regular early childhood program is closed.

DEPARTMENT RESPONSE:

There is nothing in the proposed amendment that would prohibit the CPSE from designating on a student's IEP an alternate location for SEIS to be provided when the regular early childhood program is closed.

COMMENT:

Require that SEIS only be provided during the regular school day.

DEPARTMENT RESPONSE:

The Department declines to make the recommended revision because, if a student's IEP requires extended day services, a student may need SEIS beyond the regular school day. However, most students with disabilities can and should receive their special education services during the school day.

Special Class and Related Services

COMMENT:

Some related services, such as parent counseling and training, may not be able to occur during the school day. The provision of both home-based and school-based services is appropriate for some children.

DEPARTMENT RESPONSE:

Comments are supportive in nature and no response is necessary.

COMMENT:

The proposed rule does not clarify that all instructional and related services specified in IEP must be provided during the school day by the special class program. Allow for exceptions where documentation demonstrates that extenuating circumstances prevent delivery of services during the school day and document in IEP.

DEPARTMENT RESPONSE:

The proposed rule requires that each preschool student with a disability be provided with the extent and duration of services described in the IEP and that a student's special class program include both instruction and related services specified in the IEP. Therefore, unless the IEP indicates otherwise, instructional and related services would be provided during the hours of the student's special class program.

Educational Directors

COMMENT:

Clarify if requirement applies to educational directors who supervise both approved preschool programs and approved private schools, and have no direct responsibility for school building leadership.

DEPARTMENT RESPONSE:

For preschool program educational directors hired on or after September 1, 2016, such individuals must meet the qualifications as prescribed in the proposed amendment. These requirements would only apply to those individuals providing direct on-site oversight of the preschool special education program (i.e., school building leadership).

Make Up Missed Services

COMMENT:

Clarify that 30-day make-up requirement applies to missed related services and provide field guidance. Clarify that missed sessions refers to SEIS and not special class or special class in an integrated setting.

DEPARTMENT RESPONSE:

The proposed amendment applies to all preschool providers approved by the Department. For special class programs, the provisions would apply to related services for students enrolled in such classes. Special class and SCIS programs must have substitute teachers when a student's special education teacher is absent and there is no requirement that if a student is absent from his/her special class program that the program provides a make-up session for that student. While the proposed rule does not apply to related services provided by individuals on the list maintained by the municipality, it is expected that make up sessions also be provided for related service sessions missed because of provider unavailability as appropriate.

COMMENT:

Time limit of 30 days is too short for students who do not attend program full-time.

DEPARTMENT RESPONSE:

The time limit of 30 days should be sufficient to provide most make-up sessions. If there is a documented child-specific reason why a make-up cannot be provided within 30 days, the provider should discuss with the CPSE how timely make-up sessions can be provided for the student.

COMMENT:

Restore proposed requirement for substitute teachers, as they reduce the need for make-ups.

DEPARTMENT RESPONSE:

Providers are encouraged to use substitute teachers to the maximum extent possible to provide SEIS services, but are not required to do so.

COMMENT:

Clarify that make-ups are only required when provider caused missed

service. Require make-up only after provider caused missed service and CPSE determines that it will interfere with student opportunity to meet goals. Have CPSE determine the number of make-ups needed. Require provider to notify CPSE when it is unable to implement IEP due to unavailability of staff.

DEPARTMENT RESPONSE:

Consistent with Department guidance, providers must arrange to provide students with make-up sessions when the missed sessions were due to staff absence and, as appropriate to the individual student's needs, any excused student absences. Providers may, but are not required to, make up sessions for unexcused student absences. Students must have services delivered as indicated in their IEPs; therefore, it would be not only burdensome, but unnecessary for CPSEs to determine the number of make-ups needed. The Department agrees that the CPSE should be notified immediately if a student's IEP is unable to be implemented due to unavailability of staff. There is no need to add this requirement to the proposed regulations, as it is an implicit provider responsibility.

Program Standards: Instructional

COMMENT:

Current rate setting methodology does not support additional funds for staff training and the substitutes needed to provide coverage.

DEPARTMENT RESPONSE:

The proposed amendment does not require that staff attend professional development. Additional resources, including web-based guidance will be considered to provide no-cost access to information necessary to implement the proposed amendment.

Program Standards: Active Engagement of Parents

COMMENT:

Clarify if the Early Childhood Direction Centers and Parent Centers (ECDC) will provide assistance with this requirement or if an alternative plan is in place.

DEPARTMENT RESPONSE:

ECDCs and Special Education Parent Centers are available to provide technical assistance to families and providers relating to this proposed requirement.

Program Standards: Behavioral Supports

COMMENT:

Clarify if prohibiting suspension also applies to students in private preschools who receive related services.

DEPARTMENT RESPONSE:

Program standards for positive behavioral supports, including prohibiting suspension, are requirements for approved preschool special class programs. The proposed amendment does not govern policies and practices in regular early childhood programs.

COMMENT:

Preschools may delay referral for assessment in order to avoid readmission. Providers may be reluctant to accept students that have a history of difficult behaviors. Clarify if a program is obligated to readmit a student that is expelled from preschool and subsequently becomes classified as a preschooler with a disability. Clarify if there will be a provision to provide interim services for a student that has been expelled and is waiting for an opening in a different placement.

DEPARTMENT RESPONSE:

If a current program is not appropriate to meet the needs of a student, the CPSE must act in a timely manner to secure an alternate program/placement consistent with the timelines currently in regulation. The proposed amendment would prohibit suspension or expulsion from the student's special education program or services and therefore, there would be no need for 'interim' services; however, if the location for the delivery of such services is a regular early childhood program from which the student was suspended, the CPSE would need to revise the location for the delivery of the student's special education services.

Program Standards: Progress Monitoring

COMMENT:

"Regular" is open to interpretation. Unclear how inconsistent practices regarding reporting of progress notes will addressed.

DEPARTMENT RESPONSE:

The proposed amendment requires regular progress monitoring of student achievement data, which must be consistent with frequency or timetable for such periodic reports on the progress the student is making toward the annual goals as identified in the student's individualized education program.

NOTICE OF ADOPTION

Examinations for Teacher Certification

I.D. No. EDU-05-16-00003-A
Filing No. 581
Filing Date: 2016-06-14
Effective Date: 2016-06-29

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

Action taken: Amendment of section 80-1.5 of Title 8 NYCRR.

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

Subject: Examinations for Teacher Certification.

Purpose: Extension of the safety net for the multi-subject content specialty teacher certification examination.

Text or summary was published in the February 3, 2016 issue of the Register, I.D. No. EDU-05-16-00003-EP.

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

Revised rule making(s) were previously published in the State Register on May 4, 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

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on February 3, 2016, the State Education Department (SED) received the following comments:

COMMENT:

The safety net requires completion of an online tutorial and an attestation from an academic official at a higher education institution. One commenter expressed concern that the attestation portion of the safety net is proving to be more difficult than the process discussed at the January 2016 Regents meeting.

Currently, the attestation form requires higher education officials to attest to the fact that "The teacher has a deep understanding of the Learning Standards for Mathematics and effectively connects the standards for mathematical practice with the standards for mathematical content to demonstrate a high level of mathematical proficiency and to provide highly effective mathematics instruction." This language is being interpreted by some college officials as requiring the candidate for the Students with Disabilities 7-12 Generalist certificate to possess a level of mathematical knowledge equal to a teacher who holds a math 7-12 certificate. The commenter has indicated that these certificate holders are employed as consultant teachers, resource room service providers, or integrated co-teachers. They do not deliver math content on their own. While we agree that they should have a foundation in math, the commenter indicates that the attestation requires a skill set that exceeds the knowledge the exam requires and therefore the intent of the safety net is negated. Instead, the commenter requests that the attestation be modified to require an academic official to attest to a candidate's ability to provide meaningful instructional assistance in math to students with disabilities in grades 7-12 that would be better aligned with the certificate title of students with disabilities 7-12 generalist.

DEPARTMENT RESPONSE:

The language used in the safety net attestation for Part Two: Mathematics of the Multi-Subject: Secondary Teachers (Grades 7-12) Content Specialty Test directly reflects the language in the framework of the Multi-Subject Test (see: http://www.nystce.nesinc.com/PDFs/NY__fld241__242__245__objs.pdf), which states that a teacher of students with disabilities shall have "a deep understanding of the New York State P-12 Common Core Learning Standards for Mathematics (NYCCLS) and effectively connects the standards for mathematical practice with the standards for mathematical content to demonstrate a high level of mathematical proficiency and to provide highly effective mathematics instruction." The mathematics competencies and performance expectations in the framework reflect the mathematics content knowledge and skills that are expected of a teacher who is seeking to support the teacher of record in an integrated classroom or teach students with disabilities in a self-contained classroom as either a co-teacher or a con-

sultant teacher in Grades 7-12. Thus, the attestation is not requiring mathematical content knowledge beyond what is tested on Part Two: Mathematics of the Multi-Subject Test.

The framework for the Multi-Subject test was developed through the collaboration of NYSED representatives and content specialists, based on NYSED-designated and educator-developed standards. The framework was then reviewed by New York State educators and teacher educators from across New York State on the NYSTCE Bias Review Committee and Multi-Subject 7-12 Content Advisory Committee at a Framework Review Conference. In addition, a sample of over 200 educators and teacher educators from across New York State reviewed the test framework in a Content Validation Survey. Approximately 104 New York State educators also participated in a job analysis study that identified the critical teacher tasks to which the Content Advisory Committee linked the Multi-Subject 7-12 test framework.

NOTICE OF ADOPTION

Career Development and Occupational Studies (CDOS) Graduation Pathway Option

I.D. No. EDU-14-16-00002-A

Filing No. 575

Filing Date: 2016-06-14

Effective Date: 2016-06-29

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

Action taken: Amendment of sections 100.5 and 100.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 305(1), (2), 4402(1)-(7) and 4403(3)

Subject: Career development and occupational studies (CDOS) graduation pathway option.

Purpose: To establish a Career Development and Occupational Studies (CDOS) graduation pathway option for all students who meet the requirements to earn a CDOS Commencement Credential, meet graduation course and credit requirements, and pass four required Regents Exams.

Text or summary was published in the April 6, 2016 issue of the Register, I.D. No. EDU-14-16-00002-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 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 April 6, 2016, the State Education Department (SED) received the following comments on the proposed amendment.

1. COMMENT:

Many commenters supported Career Development Occupational Studies (CDOS) pathway as additional graduation pathway. Students are diverse and diploma pathways should be too. CDOS pathway will: prepare students to be college/career ready; increase opportunity for students to graduate/graduation rates; allow students to continue Career and Technical Education (CTE) pathway without being limited by traditional graduation pathway; recognize students for work-based learning (WBL); provide valuable work-readiness credential; help increase students' skill levels and work-based practices; allow students to participate in WBL opportunities that build on strengths, interests and preferences; provide increased flexibility to meet graduation requirements (e.g., substitute credential for Global or US History Regents exams) while holding students to high standards; help students gain meaningful education; and put students in strong position to get jobs.

DEPARTMENT RESPONSE:

Comments supportive; no response necessary.

2. COMMENT:

Support expanding CDOS credential to all students. Districts will be more committed to developing robust coursework and WBL experiences and not have separate courses for students with disabilities. Important to place emphasis on CDOS; all students can benefit from WBL. Proposal gives general education students opportunity to develop entry-level employment skills. Limiting credential to students with disabilities and documenting credential on transcript unfairly stigmatized students and forced disclosure of disability to employers.

DEPARTMENT RESPONSE:

Comments supportive; no response necessary.

3. COMMENT:

CDOS pathway: lacks sequential/focused coursework and does not provide foundation to fully prepare students to be college/career ready and enter workforce; requires minimal unrelated coursework and limited WBL and career guidance; 216 hours of WBL without specific instruction in CTE coursework is insufficient to ensure career readiness; has potential to affect expansion and improvement of original five pathways by allowing districts to offer less rigorous pathway; may result in fewer students participating in more rigorous pathways; requires no measure of student achievement and conflicts with time and money spent ensuring 4+1 pathway exams were comparably rigorous to Regents exams; requires no evaluation of WBL experiences; requires no career programming; and does not address needed financial management skills. Pathway must have defined coursework and WBL (216 hours of both CTE coursework and WBL) aligned with students' interests to strengthen work-readiness knowledge and skills.

DEPARTMENT RESPONSE:

We do not agree the CDOS pathway is less rigorous. Pathway allows students to earn a diploma when they have demonstrated State's standards for academic achievement in math, English, science, social studies, and for essential work-readiness knowledge and skills necessary for successful employment. While not requiring 5th assessment, pathway is comparably rigorous because it is based upon successful completion of instruction and educational experiences that prepare students to meet commencement-level CDOS Learning Standards and demonstrate work-readiness knowledge and skills. In addition to meeting CDOS credential requirements, students must earn required course credits and pass four Regents exams, one in each of four discipline areas.

4. COMMENT:

Change CDOS credential to diploma.

DEPARTMENT RESPONSE:

Standards for a diploma must be comparably rigorous to assessment pathways and represent readiness for employment and/or postsecondary education. Requirements for CDOS credential only relate to minimum standards necessary for students to demonstrate entry-level work-readiness skills.

5. COMMENT:

Current WBL opportunities may be limited and placements will quickly reach capacity; affecting schools' ability to offer range of experiences for students with disabilities who may require additional supports/accommodations. Concerned how students will be selected to participate in limited WBL experiences. Opportunities planned for students with disabilities may be reduced as proposal does not indicate that students with disabilities must be afforded equal opportunity for placements.

DEPARTMENT RESPONSE:

Schools must ensure that all students, including students with disabilities, have meaningful access to CTE courses and WBL experiences necessary to earn CDOS credential.

6. COMMENT:

Support CDOS pathway as dual exit criteria, not as graduation option for general education students. Exiting students without a diploma limits employment and post-secondary education opportunities.

DEPARTMENT RESPONSE:

Districts remain responsible for ensuring students are provided appropriate opportunities to earn a diploma. We believe the proposal will expand these opportunities. Although the credential could be a student's only exiting credential, we expect this number will be small. Credential documents student attainment of CDOS learning standards and preparation for entry-level employment; many entry-level positions do not require a diploma.

7. COMMENT:

Work-readiness exams to earn credential (Option 2) is test substitution and does not ensure students received instruction to build workforce skill and knowledge.

DEPARTMENT RESPONSE:

Although districts may allow students to earn CDOS credential by meeting requirements of a nationally recognized work readiness credential, this should not be the only option available. Schools are expected to prepare students for Option 2 assessments. All four credentials offer suggested resources and/or recommend comprehensive curriculum to assist schools in preparing students.

8. COMMENT:

CDOS pathway does not ensure rigor of WBL placement. Recommend WBL be SED approved/registered programs and supervised by NYS certified WBL coordinator, who is knowledgeable of Labor laws and operates

under SED's guidelines, to increase quality of WBL experience; prevent districts from accepting unsupervised work experience hours; ensure safe work environments; and add rigor and relevance to pathway. Certified teacher required for all other programs; require same for WBL component of CDOS pathway.

DEPARTMENT RESPONSE:

Individuals providing WBL experiences through SED registered programs must, depending upon type of program, be certified WBL coordinators. Although those supervising locally approved community-based work programs do not require certification, SED recommends certification.

9. COMMENT:

To ensure CDOS pathway rigor and serve as alternative to Regents exam, require both Option 1 (i.e., develop career plan; achieve CDOS learning standards 1, 2 and 3a; complete 216 hours of CTE coursework and/or WBL; and employability profile and Option 2 (i.e., nationally recognized work-readiness credential) plus additional performance-based assessment using CDOS standards and range of strategies that provides learners interactive role and incorporates WBL into CDOS pathway.

DEPARTMENT RESPONSE:

SED declines to make proposed changes. CDOS pathway was intended to expand the opportunities for students to earn a regular high school diploma while ensuring standards for a diploma are comparably rigorous.

10. COMMENT:

Better define difference between CTE and CDOS pathway, or perception will be CDOS is lesser CTE pathway.

DEPARTMENT RESPONSE:

CTE pathway ensures students meet CDOS learning standard 3b-Career Majors (students choosing a career major acquire career-specific technical knowledge/skills necessary to progress toward gainful employment, career advancement, and postsecondary success) and pass corresponding technical assessment. CDOS pathway does not require students to meet CDOS learning standard 3b.

11. COMMENT:

Concerned districts will certify afterschool jobs lacking adult support or relevant coursework as WBL. Backlash from unsupported/poorly supported experiences could be immense (e.g., students getting hurt/not performing adequately and alienating businesses willing to participate).

DEPARTMENT RESPONSE:

Independent employment outside of school cannot count toward WBL for credential. WBL must be consistent with SED guidelines, including safety instruction, and under district's supervision.

12. COMMENT:

Proposal should be retroactive to class of 2015.

DEPARTMENT RESPONSE:

Law prohibits adoption of regulations that impose retroactive policy. Under Education Law, students continue to be eligible for a free public education until end of the school year in which they turn age 21 or until receipt of a diploma. Any age-eligible student who has not earned a diploma may re-enroll in school and utilize CDOS pathway to meet diploma requirements.

13. COMMENT:

Modify CDOS and other pathways using program of study to allow students to work towards CDOS credential within existing five pathways and build upon skill, knowledge and competence in career pathway framework (i.e., 15/7 proposal)). This model includes required and elective focused coursework, beginning in middle school, to pursue career interests, participate in WBL and achieve CDOS learning standards. CDOS pathway criteria, as incorporated into the five pathways, could be used as local diploma safety net for students not passing fifth exam.

Review impact of CDOS pathway after 2016-2017 school year and make necessary adjustments to ensure rigor and access.

DEPARTMENT RESPONSE:

SED will take consider these recommendations when considering future policy changes.

14. COMMENT:

Department provided no projected number of students using CDOS pathway.

DEPARTMENT RESPONSE:

Number of students who will use CDOS pathway cannot be projected as students may use any pathway option to meet diploma requirements.

15. COMMENT:

Pathway does not mandate prescribed coursework in career exploration; required coursework is purely academic.

DEPARTMENT RESPONSE:

To earn CDOS credential, district must document students have met commencement-level CDOS learning standard 1 (Career Development): Students will be knowledgeable about world of work, explore career options, and relate personal skills, aptitudes, and abilities to future career decisions. Although CDOS pathway does not require career exploration coursework, WBL experiences must relate to career awareness, exploration and/or preparation. Students may also complete CTE coursework, combined with WBL, to meet credential requirements.

16. COMMENT:

Clarify if evidence is required for each commencement-level CDOS indicator and how many sample tasks students must successfully complete to determine achievement of standards. Regents exams and SED approved assessments have specific scores. Award point value to sample tasks to determine achievement of CDOS learning standards.

DEPARTMENT RESPONSE:

Evidence is required for all performance indicators within a standard. It is not necessary for students to complete all sample tasks to demonstrate attainment of each commencement-level CDOS learning standard. Number of sample tasks students must successfully complete is a local decision.

17. COMMENT:

Inconsistent implementation of minimum 216 hours of CTE coursework and/or WBL experiences. Clarify if credential requires two credits of CTE and WBL or if 216 hours can be WBL only.

DEPARTMENT RESPONSE:

Students must successfully complete not less than equivalent of two units of study (216 hours) in either CTE courses and/or WBL(must include minimum of 54 hours of school supervised WBL). Students may complete all 216 hours through WBL. WBL experiences may, but are not required to, be completed in conjunction with CTE course(s).

18. COMMENT:

Concerned how credential will be awarded with fidelity and intended purpose of readiness for entry-level employment, and as comparably rigorous pathway, for students who successfully complete CDOS learning standards but receive mostly "unsatisfactory"/"needs improvement" on employability profile.

DEPARTMENT RESPONSE:

Schools must have evidence that students have satisfactorily completed credential requirements, including CTE and/or WBL hours as documented on employability profile. To award credential, principals must determine, based upon all requirements, whether students demonstrate entry-level work-readiness skills.

19. COMMENT:

Provides limited relief for students who struggle to demonstrate knowledge/skills on high-stakes standardized exams. Requirements still too challenging. Step away from one-size-fits-all graduation model by changing number of required exiting exams (i.e., one English, Math and Science Regents with other exams optional for honors or advanced Regents diploma) and developing performance-based assessments in lieu of Regents exams. Need sweeping changes so students unable to pass Regents exams may earn a diploma. Continue discussion to further extend diploma options. Bring back local diploma. Need more vocational credentials.

DEPARTMENT RESPONSE:

Regents continue to discuss multiple pathways to a diploma and alternative ways to assess students' proficiency toward State's learning standards for purposes of graduation with a regular diploma.

20. COMMENT:

Recommend SED publicize CDOS credential to employers.

DEPARTMENT RESPONSE:

SED met with many constituents in developing policy framework and documentation requirements for credential. Informational materials were widely disseminated to businesses statewide. SED will continue to provide further public awareness information.

21. COMMENT:

Clarify if General Educational Development (GED) and Test Assessing Secondary Completion (TASC) are equivalent to high school diploma and whether students under 21 earning these can return to school for a Regents or local diploma.

DEPARTMENT RESPONSE:

TASC, replaced GED in 2014 and is the test used in NYS for earning high school equivalency diploma (HSE), which is not a regular high school diploma. Students earning HSE diploma are entitled to remain in school until age 21 or receipt of Regents or local high school diploma.

22. COMMENT:

Content of proposal in NYS Register was confusing. Question how individuals are supposed to keep up with Regents decisions.

DEPARTMENT RESPONSE:

SED is required to post all proposed regulatory changes in NYS Register in prescribed format. Information on Regents' decisions is available at http://www.regents.nysed.gov/.

NOTICE OF ADOPTION

Appeals Process on Regents Exams Passing Score

I.D. No. EDU-14-16-00003-A
Filing No. 574
Filing Date: 2016-06-14
Effective Date: 2016-06-29

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

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

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

Subject: Appeals process on Regents exams passing score.

Purpose: To expand by two additional points the eligible score band for the appeal process on Regents examinations passing scores and to eliminate the minimum attendance eligibility requirement for such appeals.

Text or summary was published in the April 6, 2016 issue of the Register, I.D. No. EDU-14-16-00003-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 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 April 6, 2016, the State Education Department received comments on the proposed amendment. A summary of comments and the Department's responses follows.

1. COMMENT:

A commenter supports the proposed regulation expanding the score band on the appeal from 62-64 to 60-64, stating, "…the amendment allows students with test anxiety greater leeway and gives them the ability to succeed." Also states, "…there should be some minimal attendance requirement, i.e. 75%, to require responsibility from the student".

DEPARTMENT RESPONSE:

To the extent the comments are supportive, no response is necessary. However, to the extent the commenter seeks a minimum attendance requirement to require responsibility from the student, the Department believes that the proposed amendment already provides significant flexibility to the district by allowing the local appeal committee the discretion to recommend approval or denial of an appeal to the district superintendent.

2. COMMENT:

The commenter supports expanding the score band for a Regents exam appeal from 62 to 60 and supports the elimination of the minimum attendance requirement.

"We support expanding the score band for a Regents exam appeal from 62 to 60. We also support the elimination of the minimum attendance requirement. Multilingual Learners often struggle to demonstrate what they know and can do on standardized tests due to their developing English language skills. In addition, some older MLLs who have completed all of their coursework and are attempting to pass one or more Regents exams are often unable to meet the minimum attendance requirement. Some Multilingual Learners may also struggle to meet this requirement due to immigration court appearances and other situations beyond their control. "

The commenter recommends the following modifications to existing rules:

- Reduce the number of times a student must fail a Regents exam in order to be eligible for an appeal. Requiring students to attempt the exam twice causes students and schools to spend time and resources on test prep when they could be engaged in learning and mastering new material. Students who feel discouraged after their first attempt may also become disengaged from school, which contributes to higher dropout rates.
- Allow students to appeal all Regents exams. Providing students with the opportunity to appeal all of the Regents exams will help to ensure that these exams do not pose an obstacle to graduation and postsecondary opportunities for students who have mastered State standards, as demonstrated by their coursework.

The proposed changes to the requirements for a Regents exam appeal will provide increased flexibility within the current assessment system. In order to ensure that all students are given a fair opportunity to demonstrate their mastery of State standards, we encourage the New York State Education Department to continue to explore options for providing Multilingual Learners access to alternative assessments, including performance-based assessments."…

DEPARTMENT RESPONSE:

To the extent the comments are supportive of the proposed amendment, no response is necessary.

To the extent that the commenter requests that the Department reduce the number of times the test taker must take the examination before eligibility for an appeal and/or allow a student to appeal the score of any Regents examination, the Department believes the proposed amendment strikes the appropriate balance between the need to provide students with the opportunity to graduate and the Board of Regents desire to ensure that students are college and career ready upon graduation.

In the last couple of years, the Department has provided multiple safety net options for the Regents examinations and will continue to pursue other alternatives. Currently, Regents Rule section 8.3(1) and section 100.5 of the Commissioner's regulations generally set the passing score on the Regents examinations at 65. The appeals process is intended to carve out limited exceptions for students who are unable to pass a subset of Regents examinations at a 65, but have otherwise demonstrated the ability to meet the standards for graduation in those subject areas.

Moreover, the Department believes that making students take the examination twice before being eligible for an appeal provides the student with the opportunity to prepare for the examination again, with the intent for the student to review the material a second time; thereby providing them with a second meaningful opportunity to obtain the content knowledge for that subject area, so they can succeed in college and/or their career. In any case, the commenter is requesting a change to a requirement of the existing regulation that is beyond the scope of the current rule making.

NOTICE OF ADOPTION

Interest Penalties for Late Annual Assessment Fees Paid by Licensed Private Career Schools

I.D. No. EDU-14-16-00004-A
Filing No. 579
Filing Date: 2016-06-14
Effective Date: 2016-06-29

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

Action taken: Amendment of section 126.14(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2) and 5001(9)

Subject: Interest penalties for late annual assessment fees paid by licensed private career schools.

Purpose: To conform regulations to reflect current practices.

Text or summary was published in the April 6, 2016 issue of the Register, I.D. No. EDU-14-16-00004-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 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 22, 2016, the State Education Department received a couple of comments.

1. COMMENT:

The commenters supported the regulation.

DEPARTMENT RESPONSE:

Because the comments are supportive in nature, no response is required.

NOTICE OF ADOPTION

Registration and Continuing Teacher and Leader Education Requirement

I.D. No. EDU-14-16-00009-A
Filing No. 572
Filing Date: 2016-06-14
Effective Date: 2016-06-29

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

Action taken: Amendment of sections 80-3.6 and 100.2(dd); and addition of Subpart 80-6 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 212(3), 3004(1), 3006(1), (3), 3006-a(1)-(3) and 3009(1)

Subject: Registration and continuing teacher and leader education requirement.

Purpose: To implement supbart C of part EE of chapter 56 of the Laws of 2015.

Text or summary was published in the April 6, 2016 issue of the Register, I.D. No. EDU-14-16-00009-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 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 April 6, 2016, the State Education Department (SED) received the following comments:

1. COMMENT:

Several commenters request that the Department does not implement late fees for certificate holders that do not register during the 2016-2017 school year.

DEPARTMENT RESPONSE:

SED agrees. The Department will not impose any late fees on certificate holders that fail to register during the 2016-2017 school year.

2. COMMENT:

Several commenters suggested that there should be an appeals process in the future for certificate holders who miss their registration deadline, in order to appeal the $10 late fee.

DEPARTMENT RESPONSE:

Section 80-6.2(f) provides that failure to register may subject a certificate holder to a late fee of $10 per month. Given the fact that the late fee is discretionary, if an applicant disagrees with the Department's determination that a late fee shall be imposed (e.g., because the licensee was in inactive status), the licensee shall have an opportunity to be heard in a time and manner prescribed by the Department.

3. COMMENT:

Several commenters suggested that NYSED require all certificate holders who are required to initially register this year to register on July 1, 2016 rather than during their birthday month during the 2016-2017 school year. Commenters noted that using the birthday month would be hard for districts and BOCES to track, and suggested that all professional and Level III certificate holders begin registration on July 1, 2016 rather than their birthday month.

DEPARTMENT RESPONSE:

Education Law § 3006(3), as added by Chapter 56 of the Laws of 2015, allows the Department to stagger initial registrations so that registrations are distributed as equally as possible throughout the year, which the Department believes is necessary in order to avoid an overload in the online TEACH system. The Department chose the birthday month of the certificate holder in an effort to make it easier for candidates to remember when they must register and to distribute initial registrations throughout each month of the year. The Department has also tried to make it easier for first time certificate holders to register by making initial registration automatic on the date of issuance of their certificate.

4. COMMENT:

Several commenters suggested that current NYSED approved CTLE providers (school districts, BOCES, teacher centers, NYS colleges, NYSUT and other professional organizations) should not have to register every five years. They noted that if a school or BOCES is merged, joined, etc., NYSED will know about it and can adjust the NYSED records.

DEPARTMENT RESPONSE:

Education Law 3006-a requires that CTLE programs be taken from sponsors approved by the Department, including but not limited to school districts. It also requires that CTLE activities promote the professionalism of teaching and be closely aligned to district goals for student performance which meet the standards prescribed by the Commissioner. These regulations were carefully drafted to ensure that CTLE activities meet the requirements of the statute while also making it as simple as possible for school districts, BOCES, teacher centers and professional organizations to become approved sponsors and to be renewed as approved sponsors. For instance, the Department has streamlined the application process to become an approved sponsor and to renew their application and these entities are not required to pay a fee for initial approval or renewal of their registration and the five-year requirement for re-registration is consistent with the current requirements for professional development plans as required under 100.2(dd) of the Commissioner's Regulations.

5. COMMENT: Several commenters suggested that professional development hours completed during the current five-year cycle (before July 1, 2016) be counted towards fulfilling CTLE requirements for certificate holders once the new CTLE requirement begins.

DEPARTMENT RESPONSE: The law requires that CTLE be completed during the five-year registration period beginning on or after July 1, 2016. Therefore, professional development completed before this date cannot be carried over. In addition, the statute requires that "to fulfill the CTLE requirement, programs must be taken from sponsors approved by the Department…" Because professional development hours completed prior to July 1, 2016 may not have been taken from a sponsor approved by the Department under the new statute, these hours cannot be counted toward the certificate holders' five-year registration period under the new law which requires CTLE programs to be taken from sponsors approved by the Department.

6. COMMENT:

Several commenters disagree that those certificate holders who fail to notify the department of a name or address change within 30 days be subject to moral character review, because it is threatening and difficult to enforce.

DEPARTMENT RESPONSE:

Education Law § 3006(3)(d) provides that a willful failure to register or to provide notice of an address change within 180 days of such change may constitute grounds for moral character review. Since this is a statutory provision, no change is warranted.

7. COMMENT:

Several commenters suggested that CTLE recordkeeping remain as currently for school districts and BOCES, including submission of professional development plans. The concern is that the forms and terms used as part of the professional development plans are negotiated with the unions and it will be hard to revise to include requirements for English language learners, program titles, locations, and to add additional columns.

DEPARTMENT RESPONSE:

The Department has retained the requirement for professional development plans in 100.2(dd) of the Commissioner's Regulations for school districts and BOCES to develop a professional development plan, but amended the requirements to require such plans to only include 100 hours instead of the currently required 175 hours to be consistent with the CTLE requirements in Education Law § 3006-a. However, the Department encourages school districts and BOCES to provide additional CTLE to their teachers and school leaders to ensure that they remain current with their profession and meet the learning needs of their students.

8. COMMENT:

Several commenters support the change from 175 hours to 100 hours for both teachers and educational leaders, but do not support this same increase for teaching assistants because they are generally not teachers of record and in most cases act as classroom aides, and do not currently attend and/or participate in more thorough trainings that are offered to teachers and leaders.

DEPARTMENT RESPONSE:

Education Law § 3006-a(2)(a) requires holders of Level III teaching assistant certificates to complete 100 hours of CTLE. Since this is a statutory requirement, no regulatory change is warranted.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Licensure of Perfusionists

I.D. No. EDU-26-16-00017-P

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

Proposed Action: Amendment of section 29.2; and addition of section 52.47 and Subpart 79-19 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 212, 6504(not subdivided), 6507(2)(a), 6509(9), 6630, 6631, 6632, 6633, 6634, 6635, 6636; L. 2013, ch. 409

Subject: Licensure of Perfusionists.

Purpose: To establish licensure requirements for perfusionists, including education, experience and examination.

Text of proposed rule: 1. Subdivision (a) of section 29.2 of the Rules of the Board of Regents is amended, effective October 21, 2016, as follows:

(a) Unprofessional conduct shall also include, in the professions of: acupuncture, athletic training, audiology, certified behavior analyst assistant, certified dental assisting, chiropractic, creative arts therapy, dental hygiene, dentistry, dietetics/nutrition, licensed behavior analyst, *licensed perfusionist,* licensed practical nursing, marriage and family therapy, massage therapy, medicine, mental health counseling, midwifery, occupational therapy, occupational therapy assistant, ophthalmic dispensing, optometry, pharmacy, physical therapist assistant, physical therapy, physician assistant, podiatry, psychoanalysis, psychology, registered professional nursing, respiratory therapy, respiratory therapy technician, social work, specialist assistant, speech-language pathology (except for cases involving those professions licensed, certified or registered pursuant to the provisions of article 131 or 131-B of the Education Law in which a statement of charges of professional misconduct was not served on or before July 26, 1991, the effective date of chapter 606 of the Laws of 1991):

(1) . . .
(2) . . .
(3) . . .
(4) . . .
(5) . . .
(6) . . .
(7) . . .
(8) . . .
(9) . . .
(10) …
(11) …
(12) …
(13) …
(14) …

2. Section 52.47 of the Regulations of the Commissioner of Education is added, effective October 21, 2016, as follows:

§ 52.47 Licensed Perfusionist.

In addition to meeting all the applicable provisions of this Part, to be registered as a program recognized as leading to licensure as a licensed perfusionist, which meets the requirements of section 79-19.1 of this Title, the program shall:

(a) either:

(1) be a program in perfusion or a substantially equivalent program as determined by the department, which leads to a baccalaureate or higher degree; or

(2) be a credit bearing certificate program in perfusion acceptable to the department which ensures that each student holds a baccalaureate or higher degree;

(b) include course content in each of the following subjects or their equivalent as determined by the department:

(1) heart-lung bypass for patients undergoing heart surgery;

(2) long-term supportive extracorporeal circulation;

(3) monitoring of the patient undergoing extracorporeal circulation;

(4) autotransfusion; and

(5) special applications of the technology related to the practice of perfusion; and

(c) include a supervised clinical experience, which is appropriate to the practice of perfusion, as such practice is defined in subdivision (3) of section 6630 of the Education Law, and incorporates and requires performance of an adequate number and variety of circulation procedures.

3. Subpart 79-19 of the Regulations of the Commissioner of Education is added, effective October 21, 2016, to read as follows:

SUBPART 79-19

LICENSED PERFUSIONISTS

§ 79-19.1 Professional study for licensed perfusionists.

(a) As used in this section, an acceptable accrediting body for perfusion education programs shall mean an organization acceptable to the department as a reliable authority for the purpose of accreditation of perfusion education programs at the postsecondary level, which applies its criteria for granting accreditation of programs in a fair, consistent, and nondiscriminatory manner.

(b) To meet the professional educational requirement for licensure as a perfusionist, the applicant shall present satisfactory evidence of:

(1) holding a baccalaureate or higher degree in perfusion awarded upon the successful completion of a baccalaureate or higher degree program in perfusion registered as leading to licensure pursuant to section 52.47 of this Title or accredited by an acceptable accrediting body for perfusion education programs, or a baccalaureate or higher degree program that is substantially equivalent to such a registered program as determined by the department; or

(2) both:

(i) holding a baccalaureate or higher degree awarded upon the successful completion of a baccalaureate or higher degree program; and

(ii) completing a credit bearing certificate program in perfusion acceptable to the department which is accredited by an acceptable accrediting body for perfusion education programs or its equivalent as determined by the department; or

(3) completing, on or before October 20, 2018, a baccalaureate or higher degree and an accredited training program in perfusion acceptable the department. Such training program must be accredited by an acceptable accrediting body for perfusion education programs but need not be a credit bearing program.

§ 79-19.2 Licensing examinations for licensed perfusionists.

(a) Content. The licensing examination shall consist of an examination designed to test knowledge, skills and judgment relating to all areas of perfusion, including, but not limited to, the basic science of perfusion, clinical applications of perfusion, and the practice of perfusion as defined in subdivision (3) of section 6630 of the Education Law.

(b) The department may accept a passing score on an examination determined by the department to be acceptable for licensure as a licensed perfusionist.

§ 79-19.3 Fees.

(a) Applicants shall pay a fee of $50 for an initial license and a fee of $150 for the first registration period.

(b) Licensees shall pay a fee of $150 for each triennial registration period.

§ 79-19.4 Limited permits.

As authorized by section 6635 of the Education Law, the department may issue a limited permit to practice perfusion in accordance with the requirements of this section.

(a) An applicant for a limited permit to practice as a licensed perfusionist shall:

(1) file an application with the department on a form prescribed by the department together with a fee of $105 for the limited permit;

(2) meet all the requirements for licensure as a licensed perfusionist, except the examination requirement; and

(3) practice as a perfusionist only under the supervision of a licensed perfusionist and pursuant to the order and direction of a physician.

(b) The limited permit in perfusion shall be valid for a period of not more than 12 months, provided that a limited permit may be extended for an additional 12 months at the discretion of the department for good cause as determined by the department. The time authorized by such limited permit and subsequent extension shall not exceed 24 months in total.

§ 79-19.5 Special provisions.

(a) An individual who meets the requirements for a license as a licensed perfusionist except for examination, experience and education and who meets the requirements enumerated under paragraphs (1) or (2) of this subdivision may be licensed without meeting additional requirements provided that such individual submits an application to the department on or before October 20, 2018:

(1) applicants may be licensed if they have been practicing as a perfusionist, as defined in subdivision (3) of section 6630 of the Education Law, for five years in the past ten years in an inpatient unit that provides cardiac surgery services in a hospital approved by the department of health or a substantially equivalent accrediting body acceptable to the State Committee for Perfusion and the department. At least three of such years of experience shall have occurred during the past five years; or

(2) applicants who possess certification from a national certification organization acceptable to the State Committee for Perfusion and the department may be licensed if they have been employed as a perfusionist, as defined in subdivision (3) of section 6630 of the Education Law, for three of the past five years.

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

Data, views or arguments may be submitted to: 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.

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 212 of the Education Law authorizes the Department to charge fees as fixed by regulations of the Department for certifications or permits for which fees are not otherwise provided.

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

Subdivision (9) of section 6509 of the Education Law authorizes the Board of Regents to define unprofessional conduct in the professions.

Section 6630 of the Education Law, as added by Chapter 409 of the Laws of 2013, establishes and defines the new profession of perfusion.

Section 6631 of the Education Law, as added by Chapter 409 of the Laws of 2013, establishes protection for the title "licensed perfusionist."

Section 6632 of the Education Law, as added by Chapter 409 of the Laws of 2013, establishes the education, experience, examination, age, moral character and fee requirements for applicants seeking licensure as a licensed perfusionist.

Section 6633 of the Education Law, as added by Chapter 409 of the Laws of 2103, establishes a time limited licensure pathway for individuals who meet the requirements for licensure as a licensed perfusionist except for examination, experience and education, if they submit an application to the Department on or before October 20, 2018 and meet one of the following sets of requirements: (1) they have practiced as a perfusionist for five years in the past 10 years in an inpatient unit that provides cardiac surgery services in a hospital approved by the Department of Health or a substantially equivalent accrediting body acceptable to the State Committee for Perfusion and the Department at least three of such years of experience having occurred during the past five years; or (2) they possess certification from a national certification organization acceptable to the State Committee for Perfusion and the Department and have been employed as a perfusionist for three of the past five years. Although this pathway will expire on October 20, 2018, the licenses issued under it will not.

Section 6634 of the Education Law, as added by Chapter 409 of the Laws of 2013, authorizes the Board of Regents, upon the recommendation of the Commissioner of Education, to appoint a State Committee for Perfusion to assist on matters of licensing and professional conduct.

Section 6635 of the Education Law, as added by Chapter 409 of the Laws of 2013, establishes the requirements for limited permits for applicants for licensure as licensed perfusionists.

Section 6636 of the Education Law, as added by Chapter 409 of the Laws of 2013, establishes exemption requirements from the perfusion licensure requirements.

2. LEGISLATIVE OBJECTIVES:

The proposed rule carries out the intent of the aforementioned statutes and conforms the Regulations of the Commissioner of Education to Chapter 409 of the Laws of 2013, which added Article 134 to the Education Law, by establishing the requirements for licensure as a licensed perfusionist, which include, but are not limited to, professional education, experience, examination and limited permit requirements. The proposed rule also implements the statute by subjecting licensed perfusionists to the general unprofessional conduct provisions for the health provisions. In addition, the proposed rule implements the statute by establishing the program registration requirements for licensed perfusionist education programs, which include registration and curriculum requirements for programs offered in New York State that lead to licensure.

Finally, Chapter 409 of the Laws of 2013 also provides a grandparenting licensure pathway for individuals who meet the requirements for licensure as a licensed perfusionist except for examination, experience and education, if they submit an application to the Department on or before October 20, 2018 and meet one of the following sets of requirements: (1) practiced as a perfusionist for five years in the past 10 years in an inpatient unit that provides cardiac surgery services in a hospital approved by the Department of Health or a substantially equivalent accrediting body acceptable to the State Committee for Perfusion and the Department at least three of such years of experience having occurred during the past five years; or (2) possess certification from a national certification organization acceptable to the State Committee for Perfusion and the Department and been employed as a perfusionist for three of the past five years. Although the grandparenting licensure pathway will expire on October 20, 2018, the licenses issues under it will not.

3. NEEDS AND BENEFITS:

Chapter 409 of the Laws of 2013 amended the Education Law by adding Article 134, which establishes and defines the practice of the profession of perfusion. Previously, changes to the Education Law that required certain laboratory tests to be performed by licensed professionals had the unintended consequence of prohibiting perfusionists from independently performing tests essential to the proper operation of machines they operate during surgery. This forced perfusionists to get another licensed professional (a clinical laboratory technologist) to perform tests that they had previously performed independently while monitoring their machines. This situation created a risk of error in the operating room, and led to delays in surgery. To address this situation, Chapter 479 of the Laws of 2012, amended the Education Law by adding a new subdivision (9) to section 8609 of the Education Law, which allows perfusionists, through a temporary permit structure, to independently perform laboratory tests necessary to their job of running machines essential to certain procedures, including, but not limited to, open heart surgery and organ transplants. This temporary permit structure was set to expire on July 1, 2014. However, Chapter 409 extends this authorization to October 21, 2018. The effective date of Chapter 409 is October 21, 2016. At that time, perfusionists will be able to apply to become licensed by the Department and, once licensed, they will be authorized by law to conduct the appropriate tests and use the equipment necessary to perform said tests.

The purpose of the proposed rule is to protect the public by establishing licensure requirements for perfusionists to ensure a minimum standard of competency for all licensed perfusionists. The purposed rule is necessary to conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to Chapter 409 of the Laws of 2013.

As required by statute, the proposed rule is also needed to establish the program registration requirements for perfusionist education programs offered in New York State that lead to licensure. Additionally, the proposed rule is needed to subject licensed perfusionists to the general unprofessional conduct provisions for the health professions.

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 governments: There are no additional costs to local governments.

(c) Costs to private regulated parties: The proposed rule does not impose any additional costs to regulated parties beyond those imposed by statute. Pursuant to subdivision (6) of section 6632 of the Education Law, applicants for licensure as licensed perfusionists are required to pay a fee determined by the Department for an initial license and for each triennial registration period. The proposed rule requires applicants for licensure to pay a fee of $50 for initial licensure, a fee of $150 for the first registration period and a fee of $150 for each successive triennial registration period. Additionally, as required by subdivision (4) of section 6635 of the Education Law, applicants for limited permits must pay a fee of $105 to the Department for a limited permit. Higher education institutions that seek to register perfusionist education programs may incur costs related to the development and maintenance of such education programs and their registration. It is anticipated that such costs will be minimal because a few higher education institutions are already offering courses that would or could, with adjustments, meet the registration requirements for a perfusionist education program, and that higher education institutions should be able to use their existing staffs and resources to revise their courses and curricula to meet the licensed perfusionist licensure requirements.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed rule implements the requirements of Article 134 of the Education Law, as added by Chapter 409 of the Laws of 2013, by establishing licensing standards for individuals to be licensed to practice as licensed perfusionists and standards for perfusionist education programs provided by institutions of higher education to ensure that only those properly educated and prepared to be licensed perfusionists 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 requirements or other paperwork requirements beyond those imposed by the statute.

7. DUPLICATION:

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, and is necessary to implement Chapter 409 of the Laws of 2013.

8. ALTERNATIVES:

The proposed rule is necessary to conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to Chapter 409 of the Laws of 2013. There are no significant alternatives to the proposed rule and none were considered.

9. FEDERAL STANDARDS:

Since, there are no applicable federal standards for perfusionists and

perfusionist education programs, 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 Rules of the Board of Regents and the Regulations of the Commissioner of Education to Chapter 409 of the Laws of 2013. If adopted at the September 2016 Regents meeting, the proposed amendment will become effective on October 21, 2016, which is the effective date of the statute. It is anticipated that regulated parties will be able to comply with the proposed amendments by the effective date.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The purpose of the purposed rule is to implement Chapter 409 of the Laws of 2013, which establishes and defines the practice of the profession of perfusion.

Chapter 409 also provides a grandparenting licensure pathway for individuals who meet the requirements for licensure as a licensed perfusionist except for examination, experience and education, if they submit an application to the Department on or before October 20, 2018 and meet one of the following sets of requirements: (1) they have practiced as a perfusionist for five years in the past 10 years in an inpatient unit that provides cardiac surgery services in a hospital approved by the Department of Health or a substantially equivalent accrediting body acceptable to the State Committee for Perfusion and the Department at least three of such years of experience having occurred during the past five years; or (2) they possess certification from a national certification organization acceptable to the State Committee for Perfusion and the Department and have been employed as a perfusionist for three of the past five years. Although this pathway will expire on October 20, 2018, the licenses issued under it will not. The number of individuals who may be able to be licensed in New York State under the grandparenting provisions of the law is not available and is unknown. The number of these individuals who may be employed by a small business or local governments is also unknown.

2. COMPLIANCE REQUIREMENTS:

The proposed rule implements Chapter 409 of the Laws of 2013, which establish the new profession of perfusion and the requirements for licensure as a licensed perfusionist. These requirements include, but are not limited to, professional education, experience, examination and limited permit requirements. Individuals seeking licensure to practice in New York State will be required to submit an application with the State Education Department and meet all the requirements for licensure, which include, but are not limited to, the professional study, experience, and examination requirements specified in the proposed rule. Individuals seeking licensure to practice in New York State under the grandparenting licensure pathway, without a written examination, will be required to submit an application with the State Education Department on or before October 20, 2018 and meet the education and/or experience requirements specified in the proposed rule. Individuals seeking to work in New York State after completing all the requirements for licensure except the examination requirement will be required to submit a limited permit application to the State Education Department as specified in the proposed rule.

3. PROFESSIONAL SERVICES:

Unless one of the exemptions to the licensure requirements apply to their employees, who provide perfusion services in the course of their employment, the proposed rule will require small businesses and local governments to use only licensed perfusionists to provide perfusion services. It is not anticipated that small businesses or local governments will need professional services to comply with the proposed rule.

4. COMPLIANCE COSTS:

The proposed rule does not impose any direct costs on small businesses or local governments. As stated above, unless one of the exemptions to the licensure requirements set forth in section 6636 of the Education Law, as added by Chapter 409 of the Laws of 2013, applies to their employees, the proposed rule will require small businesses and local governments to use only licensed perfusionists to provide perfusion services. Pursuant to subdivision (6) of section 6632 of the Education Law, applicants for licensure as licensed perfusionists are required to pay a fee determined by the Department for an initial license and for each triennial registration period. The proposed rule requires applicants for licensure to pay a fee of $50 for initial licensure, a fee of $150 for the first registration period and a fee of $150 for each successive triennial registration period. Additionally, as required by subdivision (4) of section 6635 of the Education Law, applicants for limited permits must pay a fee of $105 to the Department for a limited permit.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule will not impose any technological requirements on regulated parties, including those that are classified as small businesses or local governments, and the proposed rule is economically feasible. See above “Compliance Costs” for the economic impact of the regulation.

6. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement the provisions of Chapter 409 of the Laws of 2013, which establish the new profession of perfusion and the requirements for licensure as a licensed perfusionist. These requirements include, but are not limited to, professional education, experience, examination and limited permit requirements. Individuals seeking licensure to practice in New York State will be required to submit an application with the State Education Department and meet all the requirements for licensure, which include, but are not limited to, the professional study, 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 requirement will be required to submit a limited permit application to the State Education Department as specified in the proposed rule. The proposed fee structure is on a par with the fee structures in other professions. It was determined that the licensure of perfusionists who meet minimum requirements established in the proposed rule best ensures the protection of the health and safety of the public.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Statewide organizations representing all parties having an interest in the practice of perfusion, including the State Committee for Perfusion and the State Board for Medicine, as well as perfusion educators from the two New York State perfusionist education programs, who are members of the State Committee for Perfusion, which include members who have experience in a small business environment, were consulted and provided input in the development of the proposed rule and their proposed comments were considered in its development.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed rule will apply to all individuals seeking licensure as licensed perfusionists and to higher education institutions that seek to register perfusionist education programs with the State Education Department, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban populations with a population density of 150 per square mile or less.

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

As required by Chapter 409 of the Laws of 2013, which is effective October 21, 2016, the proposed rule establishes the new profession of perfusion and the requirements for licensure as a licensed perfusionist which include, but are not limited to education, experience, examination and limited permit requirements.

Chapter 409 of the Laws of 2013 also provides a grandparenting licensure pathway for individuals who meet the requirements for licensure as a licensed perfusionist except for examination, experience and education, if they submit an application to the Department on or before October 20, 2018 and meet one of the following sets of requirements: (1) they have practiced as a perfusionist for five years in the past 10 years in an inpatient unit that provides cardiac surgery services in a hospital approved by the Department of Health or a substantially equivalent accrediting body acceptable to the State Committee for Perfusion and the Department at least three of such years of experience having occurred during the past five years; or (2) they possess certification from a national certification organization acceptable to the State Committee for Perfusion and the Department and have been employed as a perfusionist for three of the past five years. Although this pathway will expire on October 20, 2018, the licenses issued under it will not.

The proposed amendment to section 29.2 of the Rules of the Board of Regents and addition of section 52.47 and Subpart 79-19 to the Regulations of the Commissioner of Education implement the licensure requirements for licensed perfusionists pursuant to Chapter 409 of the Laws of 2013.

The proposed amendment to subdivision (a) of section 29.2 of the Rules of the Board of Regents adds the profession of perfusion to the list of health care professions that are subject to its unprofessional conduct provisions.

The proposed addition of section 52.47 to the Regulations of the Commissioner of Education establishes the program registration requirements for licensed perfusionist education programs. These requirements include registration and curriculum requirements for programs offered in New York State that lead to licensure as a licensed perfusionist. The proposed amendment requires professional perfusionist education programs to be a program in perfusion or a substantially equivalent program as determined by the Department to a baccalaureate or higher degree; or a credit bearing certificate program in perfusion acceptable to the Department that ensures that each student holds a baccalaureate or higher degree, which must include courses in each of the following subjects or their equivalent as determined by the Department: (1) heart-lung bypass for patients undergoing heart surgery; (2) long-term supportive extracorporeal circulation; (3)

monitoring of the patient undergoing extracorporeal circulation; (4) autotransfusion; and (5) special applications of the technology related to the practice of perfusion. The proposed amendment also requires licensure qualifying programs to include a supervised clinical experience, which is appropriate to the practice of perfusion, as such practice is defined in subdivision (3) of section 6630 of the Education Law, and incorporates and requires performance of an adequate number and variety of circulation procedures.

Additionally, the proposed addition of Subpart 79-19 to the Regulations of the Commissioner of Education establishes the requirements for licensure as a licensed perfusionist, which include, but are not limited to, education, experience, examination and limited permit requirements, as well as the requirements for the grandparenting licensure pathway.

The proposed rule will not require any higher education institution to offer an education program that leads to licensure as a licensed perfusionist. The proposed rule will not impose any reporting, recordkeeping or other compliance requirements on higher education institutions in rural areas, unless they seek to register a perfusionist education program with the Department. Such higher education institutions will have reporting and recordkeeping obligations related to the development and maintenance of their perfusionist education programs, as well as the registration of such programs with the Department.

Individuals seeking licensure to practice 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 requirements for licensure except the examination requirement will be required to submit a limited permit application to the State Education Department.

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

3. COSTS:

With respect to individuals seeking licensure as licensed perfusionists from the State Education Department, including those in rural areas, the proposed rule does not impose any additional costs beyond those required by statute. Pursuant to subdivision (6) of section 6632 of the Education Law, applicants for licensure as licensed perfusionists are required to pay a fee determined by the Department for an initial license and for each triennial registration period. The proposed rule requires applicants for licensure to pay a fee of $50 for initial licensure, a fee of $150 for the first registration period and a fee of $150 for each successive triennial registration period. Additionally, as required by subdivision (4) of section 6635 of the Education Law, applicants for limited permits must pay a fee of $105 to the Department for a limited permit.

The proposed rule will not require higher education institutions to offer education programs that prepare individuals for licensure as licensed perfusionists. However, higher education institutions that seek to register perfusionist education programs with the Department, including those in rural areas, may incur costs related to the development and maintenance of such education programs and their registration. It is anticipated that such costs will be minimal because there are a few education programs that are already offering courses that would or could, with adjustments, meet registration requirement for a perfusionist education program, and that higher education institutions should be able to use their existing staffs and resources to revise their courses and curricula to meet the perfusionist requirements.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement the provisions of Chapter 409 of the Laws of 2013, which establishes the new profession of perfusion and the licensure requirements for licensed perfusionists, which include education, experience, examination, age, moral character and fee 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 a licensed perfusionist and all higher education institutions seeking to register perfusionist education programs with the Department, regardless of the geographic location, to help ensure continuing competency across the State. The Department has also determined that uniform standards for the Department's review of registered perfusionist education programs are necessary to ensure quality perfusionist education programs in all parts of 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 perfusion. These organizations include the State Committee for Perfusion, the State Board for Medicine and perfusion professional associations and perfusion educators. These groups have members who live and work or provide perfusion education in rural areas.

6. INITITIAL 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 the third calendar year. The justification for the five year review period is that the proposed rule is necessary to implement the statutory requirements of Chapter 409 of the Laws of 2013, and, therefore, the substantive provisions of the proposed rule cannot be appealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed rule is required to implement Chapter 409 of the Laws of 2013, which establishes and defines the practice of perfusion. The proposed amendment to subdivision (a) of section 29.2 of the Rules of the Board of Regents adds the profession of perfusion to the list of health care professions that are subject to its unprofessional conduct provisions. The proposed addition of section 52.47 to the Regulations of the Commissioner of Education establishes the program registration requirements for perfusionist education programs. These requirements include registration and curriculum requirements for programs offered in New York State that lead to licensure as a licensed perfusionist. The proposed addition of Subpart 79-19 of the Regulations of the Commissioner of Education establishes the education, experience, examination, age and moral character requirements for applicants seeking licensure as a licensed perfusionist, as well as the requirements for the grandparenting licensure pathway.

It is not anticipated that the proposed rule will increase or decrease the number of jobs to be filled because, among other things, Chapter 409 of the Laws of 2013 provides for a grandparenting licensure pathway for individuals who meet the requirements for licensure as a licensed perfusionist except for examination, experience and education, if they submit an application to the Department on or before October 20, 2018 and meet one of the following sets of requirements: (1) they have practiced as a perfusionist for five years in the past 10 years in an inpatient unit that provides cardiac surgery services in a hospital approved by the Department of Health or a substantially equivalent accrediting body acceptable to the State Committee for Perfusion and the Department at least three of such years of experience having occurred during the past five years; or (2) they possess certification from a national certification organization acceptable to the State Committee for Perfusion and the Department and have been employed as a perfusionist for three of the past five years. Although this pathway will expire on October 20, 2018, the licenses issued under it will not. Therefore, the proposed rule will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Regulation of Consent Orders in Disciplinary Proceedings in the Professions

I.D. No. EDU-26-16-00018-P

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

Proposed Action: Amendment of section 17.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6509(9), 6510 and 6511(not subdivided)

Subject: Regulation of consent orders in disciplinary proceedings in the professions.

Purpose: To remove requirement that the State Board of Pharmacy Executive Secretary agree to consent orders for pharmacists/pharmacies.

Text of proposed rule: Section 17.5 of the Rules of the Board of Regents is amended, effective September 28, 2016, as follows:

§ 17.5 Consent orders.

Disciplinary proceedings conducted pursuant to the provisions of title VIII of the Education Law may be disposed of in accordance with the following procedure:

(a) A licensee who is under investigation, or against whom charges have been voted, who admits guilt to at least one of the acts of misconduct

alleged or charged, in full satisfaction of all allegations or charges, or who does not contest the allegations or charges or who cannot successfully defend against at least one of the acts of misconduct alleged or charged, shall notify the director of the Office of Professional Discipline or the director's designee.

(b) If the director of the Office of Professional Discipline or the director's designee, a designated member of the State Board for the applicable profession, and the licensee agree to a statement by the licensee admitting guilt to one or more of the allegations or charges or setting forth a decision not to contest the allegations or charges or stating that the licensee cannot successfully defend against such allegations or charges and agreeing to a proposed penalty, and if a designated member of the Board of Regents thereafter agrees to such statement and proposed penalty, and if the Committee on the Professions thereafter agrees to such statement and proposed penalty, a written application, signed by all the above except the Committee on the Professions, shall be submitted by the licensee to the Board of Regents based upon the statement and proposed penalty consenting to the issuance of an order of the Commissioner of Education or his or her designee effectuating such penalty. The provisions of this section shall apply to licensees subject to disciplinary proceedings conducted pursuant to title VIII of the Education Law. They shall be applicable to individuals licensed or registered pursuant to article 131 or 131-B of title VIII of the Education Law for those cases in which charges of professional misconduct were served on or before July 26, 1991, the effective date of chapter 606 of the Laws of 1991. They shall also be applicable to licensees and registrants subject to article 137 of the Education Law. With respect to such licensees subject to article 131 or 131-B of title VIII of the Education Law, the agreement of the director of the Office of Professional Medical Conduct or that officer's designee, and of the Commissioner of Health or his or her designee, to the statement and proposed penalty and their signatures on the application shall be required in lieu of the agreement and signature of the director of the Office of Professional Discipline. With respect to such licensees subject to the provisions of article 131 or 131-B of title VIII of the Education Law, the term State Board as used in this section means the State Board for Professional Medical Conduct. [With respect to licensees and registrants subject to article 137 of the Education Law, the agreement of the executive secretary of the State Board of Pharmacy to the statement and proposed penalty and his or her signature on the application shall also be required.]

(c) . . .

(d) . . .

(e) . . .

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

Data, views or arguments may be submitted to: 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 rulemaking 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.

Subdivision (9) of section 6509 of the Education Law authorizes the Board of Regents to define unprofessional conduct in the professions.

Section 6510 of the Education Law authorizes the Department to conduct proceedings in cases of professional misconduct.

Section 6511 of the Education Law authorizes the Board of Regents to impose penalties on licensees for professional misconduct.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative intent of the aforementioned statutes that the Board of Regents and the Department regulate the admission to and the practice in the professions, as well as the Board of Regents' authority to define unprofessional conduct and impose penalties on licensees for profession misconduct and the Department's authority to conduct proceedings in cases of professional misconduct. As part of the disciplinary proceedings conducted pursuant to the provisions of Title VIII of the Education Law, one of the ways in which disciplinary matters may be disposed of is pursuant to a consent order, which must be approved by the Board of Regents.

Before consent orders are presented to the Board of Regent for final consideration and action, the following steps are taken. The complaints are reviewed by staff of the Office of Professional Discipline (OPD) in consultation with a board member of the relevant profession.

After that initial consultation, a determination is made by the Office of the Professions' Professional Conduct Officer, often upon the advice of an expert consultant in the applicable profession, to proceed with disciplinary action and to seek the appropriate penalties.

The consent orders are then negotiated with the respondents/professional licensees charged with professional misconduct.

A member for the State board for the applicable profession then reviews and approves the consents, including the penalty, often after a face-to-face discussion with the respondent during an informal settlement conference. In disciplinary matters involving licensed pharmacists and New York State registered pharmacy establishments, the agreement of the executive secretary of the State Board of Pharmacy to the proposed licensee's or registrant's statement and proposed penalty is also required.

The proposed agreements are then reviewed and approved by a three-member panel of the Committee on the Professions after discussing each with the Professional Conduct Officer.

The proposed consent orders are then reviewed and approved by a single member of the Board of Regents, typically after discussion with the Office of the Professions' Director of Prosecutions.

The profession of pharmacy is the only profession where the executive secretary of the State Board must also agree to the proposed licensee's or registrant's statement and proposed penalty before a consent order can be presented to the Board of Regents for its consideration and action. This requirement can result in delays in the consent order process and resolution of disciplinary matters involving licensed pharmacists and registered pharmacy establishments. The proposed amendment to subdivision (b) of section 17.5 of the Rules of the Board of Regents eliminates these potential delays by removing this requirement. Eliminating this requirement will further the protection of the public by enabling the consent order process for disciplinary matters involving licensed pharmacists and registered pharmacy establishments to be completed more promptly.

3. NEEDS AND BENEFITS:

The proposed amendment to subdivision (b) of section 17.5 of the Rules of the Board of Regents eliminates the requirement that the executive secretary of the State Board of Pharmacy must also agree to the proposed licensee's or registrant's statement and proposed penalty before a consent order can be presented to the Board of Regents for its consideration and action. The profession of pharmacy is the only profession that has this requirement. This requirement can result in delays in the consent order process and resolution of disciplinary matters involving licensed pharmacists and registered pharmacy establishments. By deleting this requirement, the proposed amendment to subdivision (b) of section 17.5 of the Rules of the Board of Regents eliminates these potential delays. Removing this requirement will further the protection of the public by enabling the consent order process for disciplinary matters involving licensed pharmacists and registered pharmacy establishments to be completed more promptly.

4. COSTS:

The proposed amendment eliminates the requirement that the executive secretary of the State Board of Pharmacy must also agree to the proposed licensee's or registrant's statement and proposed penalty before a consent order can be presented to the Board of Regents for its consideration and action; it imposes no costs on any parties.

(a) Costs to State government. There are no additional costs to State government.

(b) Costs to local government. There are no additional costs to local government.

(c) Costs to private regulated parties. There are no additional costs to private regulated parties.

(d) Costs to the regulatory agency. There are no additional costs to the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment imposes no new forms, reporting requirements, or other recordkeeping or paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment to subdivision (b) of section 17.5 of the Rules of the Board of Regents arose out of concerns that the requirement that the executive secretary of the State Board of Pharmacy must also agree to the

proposed licensee's or registrant's statement and proposed penalty before a consent order can be presented to the Board of Regents for its consideration and action, could result in delays in the consent order process and resolution of disciplinary matters involving licensed pharmacists and registered pharmacy establishments. The profession of pharmacy is the only profession that has this requirement and, after reviewing the history of this requirement in this profession, the Department has determined that it is unnecessary. By deleting this requirement, the proposed amendment eliminates these potential delays and furthers the protection of the public by enabling the consent order process for disciplinary matters involving licensed pharmacists and registered pharmacy establishments to be completed more promptly. There are no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

No Federal standards apply to the subject of this proposed rule making. The Federal government does not regulate State disciplinary proceedings for professional misconduct, which includes the consent order process, for New York State licensees. 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:

If adopted at the September 2016 Regents meeting, the proposed amendment will become effective on September 28, 2016. It is anticipated that regulated parties will be able to comply with the proposed amendment by the effective date.

Regulatory Flexibility Analysis

As part of the disciplinary proceedings conducted pursuant to the provisions of Title VIII of the Education Law, one of the ways in which disciplinary matters may be disposed of is pursuant to a consent order, which must be approved by the Board of Regents.

Before consent orders are presented to the Board of Regent for final consideration and action, the following steps are taken. The complaints are reviewed by staff of the Office of Professional Discipline (OPD) in consultation with a board member of the relevant profession.

After that initial consultation, a determination is made by the Office of the Professions' Professional Conduct Officer, often upon the advice of an expert consultant in the applicable profession, to proceed with disciplinary action and to seek the appropriate penalties.

The consent orders are then negotiated with the respondents/professional licensees charged with professional misconduct.

A member for the State board for the applicable profession then reviews and approves the consents, including the penalty, often after a face-to-face discussion with the respondent during an informal settlement conference. In disciplinary matters involving licensed pharmacists and New York State registered pharmacy establishments, the agreement of the executive secretary of the State Board of Pharmacy to the proposed licensee's or registrant's statement and proposed penalty is also required.

The proposed agreements are then reviewed and approved by a three-member panel of the Committee on the Professions after discussing each with the Professional Conduct Officer.

The proposed consent orders are then reviewed and approved by a single member of the Board of Regents, typically after discussion with the Office of the Professions' Director of Prosecutions.

The profession of pharmacy is the only profession where the executive secretary of the State Board must also agree to the proposed licensee's or registrant's statement and proposed penalty before a consent order can be presented to the Board of Regents for its consideration and action. This requirement can result in delays in the consent order process and resolution of disciplinary matters involving licensed pharmacists and registered pharmacy establishments. The proposed amendment to subdivision (b) of section 17.5 of the Rules of the Board of Regents eliminates these potential delays by removing this requirement. Eliminating this requirement will further the protection of the public by enabling the consent order process for disciplinary matters involving licensed pharmacists and registered pharmacy establishments to be completed more promptly.

The proposed amendment is applicable to all licensed pharmacists and New York State registered pharmacy establishments, who seek to resolve disciplinary proceedings against them pursuant to a consent order. The proposed amendment will subject the licensed pharmacists and New York State registered pharmacy establishments to the same consent order process as all the other professions licensed under Title VIII of the Education Law, which will make this process uniform for all these professions. The proposed amendment will not impose any new reporting, recordkeeping or any other compliance requirements, 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

As part of the disciplinary proceedings conducted pursuant to the provisions of Title VIII of the Education Law, one of the ways in which disciplinary matters may be disposed of is pursuant to a consent order, which must be approved by the Board of Regents.

Before consent orders are presented to the Board of Regent for final consideration and action, the following steps are taken. The complaints are reviewed by staff of the Office of Professional Discipline (OPD) in consultation with a board member of the relevant profession.

After that initial consultation, a determination is made by the Office of the Professions' Professional Conduct Officer, often upon the advice of an expert consultant in the applicable profession, to proceed with disciplinary action and to seek the appropriate penalties.

The consent orders are then negotiated with the respondents/professional licensees charged with professional misconduct.

A member for the State board for the applicable profession then reviews and approves the consents, including the penalty, often after a face-to-face discussion with the respondent during an informal settlement conference. In disciplinary matters involving licensed pharmacists and New York State registered pharmacy establishments, the agreement of the executive secretary of the State Board of Pharmacy to the proposed licensee's or registrant's statement and proposed penalty is also required.

The proposed agreements are then reviewed and approved by a three-member panel of the Committee on the Professions after discussing each with the Professional Conduct Officer.

The proposed consent orders are then reviewed and approved by a single member of the Board of Regents, typically after discussion with the Office of the Professions' Director of Prosecutions.

The profession of pharmacy is the only profession where the executive secretary of the State Board must also agree to the proposed licensee's or registrant's statement and proposed penalty before a consent order can be presented to the Board of Regents for its consideration and action. This requirement can result in delays in the consent order process and resolution of disciplinary matters involving licensed pharmacists and registered pharmacy establishments. The proposed amendment to subdivision (b) of section 17.5 of the Rules of the Board of Regents eliminates these potential delays by removing this requirement. Eliminating this requirement will further the protection of the public by enabling the consent order process for disciplinary matters involving licensed pharmacists and registered pharmacy establishments to be completed more promptly.

The proposed amendment is applicable to all licensed pharmacists and New York State registered pharmacy establishments, who seek to resolve disciplinary proceedings against them pursuant to a consent order, including those who live or work in rural areas. The proposed amendment will subject the licensed pharmacists and New York State registered pharmacy establishments to the same consent order process as all the other professions licensed under Title VIII of the Education Law, which will make this process uniform for all these professions. The proposed amendment does not impact entities in rural areas of New York State. Accordingly, no further steps were needed to ascertain the impact of the proposed amendment on entities in rural areas and none were taken. Thus, a rural area flexibility analysis is not required and one has not prepared.

Job Impact Statement

As part of the disciplinary proceedings conducted pursuant to the provisions of Title VIII of the Education Law, one of the ways in which disciplinary matters may be disposed of is pursuant to a consent order, which must be approved by the Board of Regents.

Before consent orders are presented to the Board of Regent for final consideration and action, the following steps are taken. The complaints are reviewed by staff of the Office of Professional Discipline (OPD) in consultation with a board member of the relevant profession.

After that initial consultation, a determination is made by the Office of the Professions' Professional Conduct Officer, often upon the advice of an expert consultant in the applicable profession, to proceed with disciplinary action and to seek the appropriate penalties.

The consent orders are then negotiated with the respondents/professional licensees charged with professional misconduct.

A member for the State board for the applicable profession then reviews and approves the consents, including the penalty, often after a face-to-face discussion with the respondent during an informal settlement conference. In disciplinary matters involving licensed pharmacists and New York State registered pharmacy establishments, the agreement of the executive secretary of the State Board of Pharmacy to the proposed licensee's or registrant's statement and proposed penalty is also required.

The proposed agreements are then reviewed and approved by a three-member panel of the Committee on the Professions after discussing each with the Professional Conduct Officer.

The proposed consent orders are then reviewed and approved by a single member of the Board of Regents, typically after discussion with the Office of the Professions' Director of Prosecutions.

The profession of pharmacy is the only profession where the executive secretary of the State Board must also agree to the proposed licensee's or registrant's statement and proposed penalty before a consent order can be presented to the Board of Regents for its consideration and action. This requirement can result in delays in the consent order process and resolution of disciplinary matters involving licensed pharmacists and registered pharmacy establishments. The proposed amendment to subdivision (b) of section 17.5 of the Rules of the Board of Regents eliminates these potential delays by removing this requirement. Eliminating this requirement will further the protection of the public by enabling the consent order process for disciplinary matters involving licensed pharmacists and registered pharmacy establishments to be completed more promptly.

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 these facts and none were taken. Accordingly, a job impact statement is not required and one has not prepared.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

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

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

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

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

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

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

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

Substance of revised rule: The State Education Department proposes to amend Part 279 of the Regulations of the Commissioner of Education, effective January 1, 2017. The following is a summary of the substantive provisions of the proposed rule.

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

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

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

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

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

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

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

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

Section 279.8 is amended to clarify that pleadings must be signed by an attorney or by a party if the party is not represented by counsel; modify the permissible lengths of pleadings and memoranda of law; clarify the proper form of pleadings and clarify that issues not properly identified will not be addressed; and clarify the proper scope of a memorandum of law.

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

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

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

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

Revised rule compared with proposed rule: Substantial revisions were made in sections 279.1, 279.2, 279.4, 279.5 and 279.8.

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

Data, views or arguments may be submitted to: Justyn P. Bates, State Review Officer, State Education Department, Office of State Review, 80 Wolf Road Suite 203, Albany, NY 12205, (518) 485-9373, email: osrcomment@nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on January 27, 2016, the following substantial revisions were made to the proposed amendments:

Sections 279.1(a) and (b) and 279.2(a) and (d) are revised to clarify that the scope of review of the decision of an impartial hearing officer by a State Review Officer ("SRO") includes the provision of a free appropriate public education to a student.

The proposed amendment to section 279.1(d) which requires parties to challenge the impartiality of the SRO in a pleading is withdrawn.

Section 279.4(c) is revised to withdraw the option to effectuate service by placing the request for review in an opaque wrapper addressed to the parent and marked "Confidential," affixing the same to the door of the parent's residence, and mailing a copy of the request for review by certified mail to the parent's last known residence.

Section 279.5(b) is revised to provide that an answer to a cross-appeal may be served within 5 business days, rather than calendar days, after service of a cross-appeal.

The proposed amendment to section 279.8(e), requiring that electronic copies of pleadings and the memorandum of law to be filed with the Office of State Review together with the pleadings is withdrawn.

The proposed amendment to section 279.8(f), which states that the filing of pleadings and the memorandum of law is complete upon receipt by Office of State Review is withdrawn.

These revisions require that the Needs and Benefits section of the previously published Regulatory Impact Statement be revised to read as follows:

NEEDS AND BENEFITS:

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

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

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

The revisions to section 279.2 require that any party seeking review of an impartial hearing officer's decision must personally serve a notice of intention to seek review or cross-appeal on the opposing party and requires parties to serve a statement of those issues the party seeks to have reviewed along with the notice of intention. This modification will provide notice to the opposing party regarding which of the impartial hearing officer's determinations will be appealed. The revision also codifies State Review Officer precedent permitting review of an impartial hearing officer's determination despite a party's failure to timely serve a notice of intention.

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

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

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

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

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

The revisions to section 279.8 clarify requirements regarding the form and scope of pleadings and memoranda of law. These modifications will facilitate the timely review of impartial hearing officer decisions by State Review Officers, by requiring parties to more clearly state their arguments on appeal.

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

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

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

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

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on January 27, 2016, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The purpose of the revised proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearings relating to the provision of special education to student with disabilities by school districts. The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on January 27, 2016, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The purpose of the revised proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearings relating to the provision of special education to student with disabilities by school districts. The above revisions to the proposed rule do not require any revisions to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on January 27, 2016, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revised proposed amendment relates to appeal procedures for State-level review of determinations of impartial hearing officers in hearings relating to the provision of special education to student with disabilities by school districts and will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the revised proposed rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on January 27, 2015, the State Education Department (SED) received a number of comments. A summary of the comments and the Department's responses follows. The full text may be found on the Office of State Review's (OSR's) website (www.sro.nysed.gov).

1. COMMENT:

A commenter objects to the proposed regulation requiring parties to challenge the impartiality of a State Review Officer (SRO) in their pleadings, stating that there is no way for a party to know which SRO is assigned to the appeal.

DEPARTMENT RESPONSE:

The Department agrees and the proposed change has been withdrawn.

2. COMMENT:

Several commenters object to the proposed amendment regarding the scope of review of impartial hearing officer (IHO) determinations by SROs.

DEPARTMENT RESPONSE:

The proposed amendment has been revised to align the language used in Part 279 with that used in the Education Law and Part 200 (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[i]).

3. COMMENT:

One commenter objects to the proposed regulation extending the requirement to serve a notice of intention to seek review to school districts. Two commenters support the proposed regulation.

DEPARTMENT RESPONSE:

The proposed requirement is intended to ensure that parents are given advance notice of a school district's challenge to an IHO's determination. The notice of intention to seek review places little additional burden on a school district. Therefore, the Department does not believe a change is warranted.

4. COMMENT:

Several comments object to the requirement that parties file a notice of intention to cross-appeal.

DEPARTMENT RESPONSE:

No change is necessary because of the interest of ensuring that parties are aware of the intention of the opposing party to cross-appeal.

5. COMMENT:

One commenter requests that the notice of intention to seek review or cross-appeal include a binding statement of the issues being appealed.

DEPARTMENT RESPONSE:

One purpose of the notice of intention is to permit parties to begin to consider responsive pleadings; however, it would be inappropriate to preclude parties from modifying their positions prior to the submission of pleadings.

6. COMMENT:

Several commenters believe the proposed regulation providing SROs with discretion to excuse the failure to timely serve a notice of intention to seek review or cross-appeal gives SROs the ability to review IHO decisions without either party seeking review.

DEPARTMENT RESPONSE:

No changes to the proposed regulation are required because initiation of review of an IHO decision is made by personal service and filing of a notice of request for review and a request for review, not by a notice of intention to seek review (8 NYCRR 279.4[a]). The proposed regulation does not provide SROs with the authority to review IHO decisions without a request for review.

7. COMMENT:

Several commenters object to the proposed change requiring parties to serve a case information statement with a notice of intention to seek review or cross-appeal.

DEPARTMENT RESPONSE:

The Department has carefully considered the commenters' suggestion and believes no change is necessary. The proposed case information statement provides parties with notice of topics that may be raised in the pleadings but does not preclude parties from raising additional claims. The case information statement will be akin to a simplified version of request for judicial intervention forms used in state courts and draft samples have been posted on OSR's website (www.sro.nysed.gov).

8. COMMENT:

One commenter suggests that the proposed language regarding the fil-

ing of specific documents with hearing records imposes a burden on school districts.

DEPARTMENT RESPONSE:

No change is necessary. The proposed regulation conforms the language in Part 279 with requirements set forth in 8 NYCRR 200.5(j)(5)(vi). As the specified documents are already a part of the record, the proposed amendment does not impose any additional burden on school districts.

9. COMMENT:

One commenter suggests adding 10 days to file the hearing record when a party appeals from the decision of an IHO and requests that OSR implement practices to encourage timely submission of records.

DEPARTMENT RESPONSE:

This suggestion would unduly limit an SRO's ability to timely review the record. A district has 10 days from receipt of a parent's notice to file the complete, certified hearing record with OSR. The record components are available to the district, as it is a party to the due process proceeding. If a board of education believes rare circumstances are preventing it from timely submitting a record, the board may seek assistance from the office of SED responsible for oversight of IHOs.

10. COMMENT:

Some commenters object to the proposed regulation clarifying the authority of an SRO to take specific actions when a district fails to file a hearing record.

DEPARTMENT RESPONSE:

Upon receipt of a notice of intention to seek review, a district has 10 days to file the complete record with OSR. Therefore, a district has notice of its obligation to file the record as a part of the review process. Moreover, if a board of education believes rare circumstances are preventing it from timely submitting a record, the board may seek assistance from the office of SED responsible for the oversight of IHOs. Therefore, the Department does not believe a regulatory change is needed.

11. COMMENT:

Some commenters suggest that because the regulations require districts to provide OSR with a copy of the hearing record, the regulations should also require the district to provide parents with a copy of the record.

DEPARTMENT RESPONSE:

No change is necessary. OSR requires a full and complete copy of the hearing record in order to render a decision. Parents are entitled to a copy of the record pursuant to other regulations (34 CFR 300.512[a][4]; 8 NYCRR 200.5[j][3][v]) and a requirement for another copy is unnecessary and unduly burdensome.

12. COMMENT:

Two commenters object to the requirement that districts effectuate personal service on parents.

DEPARTMENT RESPONSE:

No change is warranted. Personal service achieves the important purpose of ensuring that the opposing party has notice of the proceeding and an opportunity to respond. Nothing precludes parties from agreeing to waive personal service, and alternate methods of service are permitted if personal delivery cannot be made after diligent attempts.

13. COMMENT:

One commenter objected to the alternate service provision permitting service by affixing the request for review to the door of the parent's residence.

DEPARTMENT RESPONSE:

The proposed regulation providing for an affix-and-mail service option is withdrawn. The Department agrees that it may be insufficiently protective of the confidentiality rights of students with disabilities to permit affix-and-mail service on an unmonitored basis.

14. COMMENT:

Regarding length of pleadings, some commenters suggest that the 10-page limitation will prejudice parties. One commenter supports the proposed changes.

DEPARTMENT RESPONSE:

After consideration of the comments, the Department does not believe that regulatory changes are needed. While the length of a request for review or answer has been shortened, the length of the memorandum of law has been increased, and the total length of permitted submissions is the same.

15. COMMENT:

Some commenters oppose and one commenter supports the proposed regulation eliminating the requirement that pleadings set forth allegations in numbered paragraphs.

DEPARTMENT RESPONSE:

The proposed regulation requires that pleadings include "a clear and concise statement of the issues presented for review and the grounds for reversal or modification to be advanced, with each issue numbered and set forth separately," which follows the requirement that a petition specify the reasons for challenging the IHO's decision and identify the findings, conclusions, and orders to which exceptions are taken. Therefore, the Department does not believe that any regulatory changes are needed.

16. COMMENT:

Some commenters oppose the proposed regulation requiring the filing of electronic copies of pleadings.

DEPARTMENT RESPONSE:

The Department has determined that further study of this issue is needed, and the proposed regulatory change has been withdrawn at this time.

17. COMMENT:

Regarding the requirement for verification of pleadings, two commenters state that the requirement is burdensome on parents.

DEPARTMENT RESPONSE:

The proposed regulation makes technical changes to the language of the current regulation requiring the verification of all pleadings and does not impose any new requirements. Therefore, no regulatory changes are needed. OSR has not received any requests that the requirement be waived on the basis of hardship.

18. COMMENT:

A number of commenters state that it is not reasonable for the proposed change to provide 5 business days to serve an answer.

DEPARTMENT RESPONSE:

New York is the most permissive state operating a two-tier IDEA administrative hearing system in allowing answers as of right. As a decision must be rendered within 30 days of receipt of a request for review, timelines for filing pleadings are necessarily limited. In order to balance the limited time to answer with the need of respondents to mount a defense, service of a notice of intention to seek review has been extended to all parties so that respondents will be aware of a petitioner's intention to appeal within 25 days after the date of the IHO's decision, the length of memoranda has been extended to comport with the length of post-hearing briefs to diminish the amount of revisions needed to adapt arguments on appeal, and parties may request extensions of time to answer.

19. COMMENT:

Several commenters assert that the proposal to require parties to serve an answer to a cross-appeal within 5 days could lead to confusion.

DEPARTMENT RESPONSE:

The Department agrees, and has revised the proposed amendment to provide 5 business days to answer a cross-appeal.

20. COMMENT:

Several commenters objected to the time provided to reply to an answer.

DEPARTMENT RESPONSE:

The timeline in which a reply must be served is not modified by the proposed amendments.

21. COMMENT:

Two commenters support the proposed regulation permitting a reply to address claims raised by an answer or cross-appeal that were not addressed in the request for review.

DEPARTMENT RESPONSE:

Because the comment is supportive in nature, no response is required.

22. COMMENT:

A commenter states that clarification of the manner in which parties may submit additional evidence and the standard that will be applied in determining whether to accept such evidence is necessary.

DEPARTMENT RESPONSE:

The proposed regulation does not provide parties with a right to submit additional evidence, but, in line with federal regulations, authorizes an SRO to seek additional evidence if necessary to render a decision. The manner in which additional evidence is sought or accepted is in the discretion of the SRO. No change is required.

23. COMMENT:

Some commenters object to the provisions in the proposed regulation requiring that extension requests be postmarked no later than one business day prior to the date on which the time to answer or reply will expire, because a party may not receive a response until the deadline passes.

DEPARTMENT RESPONSE:

No change is required. The proposed regulation does not change the requirement that requests for extensions be postmarked but requires that the request be submitted one day before the deadline expires. Parties concerned that they may not receive a response in time should contact OSR before the deadline expires.

24. COMMENT:

One commenter supports the proposed regulation identifying settlement negotiations as good cause for a request for an extension.

DEPARTMENT RESPONSE:

Because the comment is supportive in nature, no response is required.

25. COMMENT:

Some commenters object to the proposed regulation requiring that the filing of a pleading is complete when received by OSR because it does not provide sufficient time for filing.

DEPARTMENT RESPONSE:

The proposed change has been withdrawn.

26. COMMENT:
One commenter objected to the proposed change from "petition" to "request for review."
DEPARTMENT RESPONSE:
The language "request for review" in the proposed amendment is intended to conform to the terminology used in both State and federal regulations.
27. COMMENT:
One commenter suggested that the proposal to designate periods of time "after" the date of an IHO's determination, rather than "from" the date of the decision, was unclear.
DEPARTMENT RESPONSE:
The use of the word "after" was intentional; computation of days excludes the day on which an event occurs.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Amend 6 NYCRR Part 40 Pertaining to Recreational Party and Charter Boat Regulations for Striped Bass

I.D. No. ENV-26-16-00002-P

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

Proposed Action: This is a consensus rule making to amend Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105, 13-0336, 13-0339 and 13-0347

Subject: To amend 6 NYCRR Part 40 pertaining to recreational party and charter boat regulations for striped bass.

Purpose: To allow filleting of striped bass aboard party and charter boats.

Text of proposed rule: 6 NYCRR Paragraph 40.1(g)(1) is amended to read as follows:

(1) Except as provided in [subparagraph (4)(v)] *paragraphs (4) and (5)* of this subdivision, it is unlawful for any person to possess striped bass from which the head or tail has been removed or that have been otherwise cleaned, cut, filleted or skinned so that the total length or identity cannot be determined; except that it is not unlawful if such fish is being prepared for immediate consumption or storage at a domicile or place of residence.

Paragraphs 40.1(g)(4) and (5) are adopted to read as follows:

(4) Any person who holds a valid Marine and Coastal District Party and Charter Boat License issued pursuant to Environmental Conservation Law 13-0336 may fillet striped bass taken on the permitted party or charter vessel identified on his or her license under the following conditions:

(i) fish may be filleted for customers only;

(ii) only fish which are legally possessed may be filleted;

(iii) striped bass may only be filleted prior to customers leaving the vessel or the dock area prior to customers departing the area;

(iv) it is unlawful to mutilate any striped bass carcass to the extent that the total length or species of fish cannot be determined;

(v) all striped bass carcasses must be retained (unmixed with any other material) in a separate container readily available for inspection until such time as the vessel has docked and all passengers from that trip have left the vessel and the dock area. Any such carcasses are included in the possession limit; and

(vi) all striped bass carcasses from any previous trip must be disposed of prior to any person beginning to fish on a subsequent trip;

(vii) all Marine and Coastal District Party and Charter Boat License holders must provide each customer who possesses striped bass fillets with a commercially printed, dated original fare receipt, bearing the boat's name and the owner or operator's Party and Charter Boat License number. Any customer of a party or charter boat operated by a Marine and Coastal District Party and Charter Boat License holder who is in possession of striped bass fillets must possess an original dated receipt from that party or charter vessel.

(5) Violators of any of the provisions of this subdivision are subject to the penalties established pursuant to the provisions of article 71 of the Environmental Conservation Law and may be subject to license revocation pursuant to Part 175 of this Title.

Text of proposed rule and any required statements and analyses may be obtained from: Carol Hoffman, NYSDEC, Marine Resources, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0476, email: carol.hoffman@dec.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.

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

Consensus Rule Making Determination

This proposed rulemaking reinstates a provision in 6 NYCRR Section 40.1 that was inadvertently repealed in 2015. Prior to 2015, DEC regulations allowed party and charter boat license holders, while on board their vessels, to fillet striped bass for their customers. It was not DEC's intention to remove this provision. The proposed rule will ensure that party and charter boat businesses may continue to provide this service for their customers.

No person is likely to object to the rule because it simply reinstates a provision that was unintentionally repealed. There are no anticipated adverse impacts, and there are no costs to DEC, local municipalities, or the regulated public.

Job Impact Statement

DEC has determined that this rule making will not have substantial adverse impact on jobs and employment opportunities. Therefore, a Job Impact Statement is not required.

This proposed rule will amend 6 NYCRR Part 40 to reinstate a provision that was inadvertently removed by a rule change that was adopted in 2015. Prior to 2015, DEC regulations allowed the filleting of striped bass aboard marine and coastal district party and charter boats. DEC issued 488 party and charter boat licenses in 2015. The proposed rule will ensure that party and charter boat businesses may continue to provide this service for their customers.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rule Making to Implement ECL 17-0826-a

I.D. No. ENV-26-16-00013-P

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

Proposed Action: Amendment of Parts 621 and 750 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), (t), (2)(m), 17-0303(3), 17-0803, 17-0804 and 17-0826-a

Subject: Rule making to implement ECL 17-0826-a.

Purpose: To implement the reporting, notification and record keeping requirements of ECL 17-0826-a.

Substance of proposed rule (Full text is posted at the following State website:http://www.dec.ny.gov/65.html): The proposed rule would revise provisions of 6 NYCRR Part 750 to implement the reporting, notification and record keeping requirements of ECL section 17-0826-a, known as the Sewage Pollution Right to Know Act (SPRTK). Under SPRTK, publicly owned treatment works (POTWs) and operators of publicly owned sewer systems (POSSs) are required to report untreated and partially treated sewage discharges to the New York State Department of Environmental Conservation (DEC) and the local health department, or if there is none, the New York State Department of Health, within two hours of discovery of the discharge. However, partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit does not need to be reported. SPRTK specifies the necessary minimum content of these two hour reports to the extent the information is knowable with existing systems and models. Furthermore, SPRTK requires POTWs and operators of POSSs to notify the chief elected official, or authorized designee, of the municipality in which the discharge occurred and the chief elected official, or authorized designee, of any adjoining municipality of untreated and partially treated sewage discharges within four hours of discovery of the discharge. For discharges that may present a threat to public health, the same notification must also be provided to the general public within the same four hour time frame through appropriate electronic media as determined by DEC. The rule making provisions to implement SPRTK are summarized below.

750-1.1

Subdivision (f) of Section 750-1.1 would be amended to reference State

Pollutant Discharge Elimination System (SPDES) registrations which would be the new regulatory mechanism for POSSs.

750-1.2

New definitions would be added to Section 750-1.2 to clarify the scope and meaning of the proposed rule. Paragraph (20) of Subdivision (a) would define the term 'Combined Sewer Overflow (CSO)' and Paragraph (21) of Subdivision (a) would define the term 'Combined Sewer System (CSS).' SPRTK reporting and notification requirements apply to CSO discharges from CSSs to the extent these discharges are knowable with existing systems and models, so it is necessary to define these terms for the regulated community. The term 'Publicly Owned Sewer System (POSS)' would be defined in Paragraph (70) of Subdivision (a). Under the proposed definition, a 'POSS' would mean "a sewer system owned by a municipality and which discharges to a POTW owned by another municipality." The existing definition of 'municipality' in current 6 NYCRR section 750-1.2(a)(51) would apply to the new definition of 'POSS' and continue to apply to the current definition of 'POTW' which would remain unchanged. Thus, both POTWs and POSSs would include systems that are owned by a "county, town, city, village, district corporation, special improvement district, sewer authority or agency thereof." The new definition of 'POSS,' however, would distinguish POSSs from POTWs because POTWs are defined to include sewers that discharge to the POTW only if those sewers are owned by the same municipality that owns the POTW. Finally, Paragraphs (63) and (96) of Subdivision (a) would define the terms 'partially treated sewage' and 'untreated sewage' to specify the type of waste that would be addressed by the proposed rule. The new definition of 'partially treated sewage' would replace the existing definition of 'partially treated' since Part 750 only uses the term 'partially treated' when referring to sewage. The new definition for 'partially treated sewage' is at least as stringent as the previous definition of 'partially treated' and aligns with the intent of SPRTK to require prompt reporting and notification by POTWs and POSSs of discovered sewage discharges when the discharged sewage has not been fully treated at the treatment plant of a sewage treatment works. Other paragraphs in Subdivision (a) would be renumbered to accommodate the new definitions in this section.

750-1.22

The proposed rule would add a new Section 750-1.22 to establish a SPDES registration program for POSSs and obligate owners and operators of these facilities to comply with specified reporting and notification requirements in amended Section 750-2.7. New Section 750-1.22 would require owners of existing POSSs to register the facility with DEC within 30 days from the effective date of the proposed rule. This section would also obligate owners of POSSs to obtain DEC approval and a new or amended registration before commencing construction of a new or modified POSS. Furthermore, this section would require owners of POSSs to notify DEC 30 days prior to a transfer in ownership or operation of the facility; establish registration procedures regarding POSSs; obligate owners and operators of POSSs to properly operate and maintain their facilities; and provide DEC with express authority to inspect POSSs and their records. Finally, this section would require owners and operators of POSSs to comply with two hour reporting, four hour notification, and five-day written incident reporting obligations set forth in amended Section 750-2.7. Current Section 750-1.22 and subsequent sections of Subpart 750-1 would be renumbered to accommodate this new section.

750-2.6

Subdivisions (a) and (b) of Section 750-2.6 would be amended to specify that this section applies to SPDES permittees that are not POTWs. POSSs are only required to obtain SPDES registrations, not permits. Thus, the revisions would make clear that the special reporting requirements in Section 750-2.6 continue to apply to non-POTW SPDES permittees (such as commercial and industrial facilities), but that this section does not address POTWs or POSSs.

750-2.7

Subdivision (b) of Section 750-2.7 would be amended to implement the new reporting and notification obligations that apply to owners and operators of POTWs and POSSs.

Amended Subdivision (b), Paragraph (1) would continue to limit the two hour reporting obligation for non-POTW SPDES permitees to discharges that would affect bathing areas during the bathing season, shellfishing or public drinking water intakes. A small number of minor revisions would be made to this paragraph and Subparagraphs (i) through (v) to eliminate obsolete language and to clarify that the content of two hour reports filed by non-POTW SPDES permittees would be the same as that for POTWs and POSSs.

Amended Subdivision (b), Subparagraph (2)(i) would require owners and operators of POTWs and POSSs to report untreated and partially treated sewage discharges to DEC and the local health department, or if there is none, the New York State Department of Health, within two hours of discovery of the discharge. However, the proposed rule would not require that partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit be reported. This provision would also require owners and operators of POTWs and POSSs to make a report for each day that the discharge continues after the date the initial report is made, except that on the day the discharge terminates, a report documenting termination of the previously reported discharge may be made in lieu of the discharge report. Clauses (a) through (e) of this subparagraph would set forth the necessary content of the reports to the extent the information is knowable with existing systems and models.

Amended Subdivision (b), Clause (2)(ii)(a) would implement SPRTK's four hour notification requirement with respect to municipalities. This provision would require owners and operators of POTWs and POSSs to notify the chief elected official, or authorized designee, of the municipality in which the discharge occurred and the chief elected official, or authorized designee, of any adjoining municipality of untreated and partially treated sewage discharges within four hours of discovery of the discharge. However, this notification would not apply to partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. Owners and operators of POTWs and POSSs would also be required to continue notifying these municipalities each day that the discharge continues after the date the initial notification is made until the discharge terminates, except that on the day the discharge ceases, a notification that the discharge has terminated may be made in lieu of the discharge notification for that day. For purposes of this clause, a 'municipality' would mean "a city, town or village" and an 'adjoining municipality' would mean "any municipality that is directly adjacent to the municipality in which the discharge occurred."

Amended Subdivision (b), Clause (2)(ii)(b) would implement SPRTK's four hour notification requirement for the general public. This provision would obligate owners and operators of POTWs and POSSs to notify the general public within four hours of discovery of discharges of untreated and partially treated sewage to surface water by using appropriate electronic media as determined by DEC, except that this notification would not be required for partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. Like municipal notifications, owners and operators of POTWs and POSSs would be required to make notifications to the general public for each day that the discharge continues and a termination notice may be made in lieu of a discharge notification on the day the discharge concludes. However, as with the initial notification to the general public, the daily public notifications would be limited to surface water discharges in contrast to municipal notifications which would apply to all untreated and partially treated sewage discharges.

Amended Subdivision (b), Subparagraph (2)(iii) would provide that "[f]or combined sewer overflows for which real-time telemetered discharge monitoring and detection does not exist, owners and operators of POTWs and POSSs shall make reasonable efforts to expeditiously issue advisories through appropriate electronic media to the general public when, based on actual rainfall data and predictive models, enough rain has fallen that combined sewer overflows are likely of enough volume to cause potential health concerns for people who may come in contact with the water." Under this subparagraph, these advisories may be made on a waterbody basis rather than by individual combined sewer overflow points.

Subdivision (c) would be amended to eliminate 24 hour oral reporting by POTW SPDES permittees of those discharges that would now be covered by the new two hour reporting. The other existing 24 hour oral reporting requirements for POTWs that are not affected by SPRTK would be left unchanged. Furthermore, the current 24 hour oral reporting requirements for non-POTW SPDES permittees are not impacted by SPRTK and would remain the same.

Subdivision (d) would be amended to extend the requirement to file a five-day written incident report to owners and operators of POSSs; provide that these reports must be submitted to DEC (rather than the regional water engineer); and require that such reports be submitted on a form prescribed by DEC. Furthermore, this subdivision would now provide that DEC may waive the requirement for a five-day written incident report for both SPDES permittees and POSSs in situations where applicable reporting requirements have been satisfied.

750-2.10

New Subdivision (j) would be added to Section 750-2.10 to provide that owners of new or modified POSSs must comply with the registration requirements of section 750.1.22 before construction and connection to any existing POTW or POSS.

Other Revisions

Various United States Environmental Protection Agency guidance documents and federal regulations are listed as references in current Section 750-1.24. The proposed rule would renumber this section to be Section 750-1.25. Consequently, the proposed rule would also amend the various provisions throughout Subpart 750-1, Subpart 750-2, and Part 621

that cross reference this section to denote the proper renumbered section. In addition, the Table of Contents for Subpart 750-1 would be amended to reflect the addition of new Section 750-1.22 and renumbering of subsequent sections of this subpart. Furthermore, the Table of Contents for Subpart 750-2 would be amended to modify the heading language for Sections 750-2.6 and 750-2.7 to clarify the scope of the rule making. This heading language would also be amended at the locations where these sections appear in the regulations.

Text of proposed rule and any required statements and analyses may be obtained from: Robert J. Simson, New York State Department of Environmental Conservation, 625 Broadway, 4th Floor, Albany, N.Y. 12233-3505, (518) 402-8271, email: sprtkcomments@dec.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.

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

Summary of Regulatory Impact Statement

1. Statutory authority. The rule is authorized by Environmental Conservation Law (ECL) section 17-0826-a, known as the Sewage Pollution Right to Know Act (SPRTK), which took effect on May 1, 2013 and expressly directs the Department of Environmental Conservation (DEC) to promulgate regulations that are necessary to implement this statute (ECL section 17-0826-a (2), (4)).

SPRTK requires publicly owned treatment works (POTWs) and operators of publicly owned sewer systems (POSSs) to report untreated and partially treated sewage discharges to DEC and the local health department, or if there is none, the New York State Department of Health (NYSDOH) within two hours of discovery. However, partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit does not have to be reported. Under existing regulations, two hour reporting is limited to discharges by State Pollutant Discharge Elimination System (SPDES) permittees (consisting primarily of POTWs, commercial businesses and industrial facilities) that would affect bathing areas during the bathing season, shellfishing or public drinking water intakes. Therefore, it is necessary to revise the regulations to be consistent with the new expansive two hour reporting obligation. SPRTK also requires POTWs and operators of POSSs to notify the chief elected official of the municipality where the discharge occurred and adjoining municipalities of untreated and partially treated sewage discharges within four hours of discovering the discharge. The general public must also be notified within the same four hour time frame of any discharges that may present a public health threat. The proposed rule would implement these new four hour notification obligations through language that aligns with the statute.

A 'POSS' would be defined as "a sewer system owned by a municipality and which discharges to a POTW owned by another municipality" because under current regulations those sewer systems that discharge to a POTW owned by the same municipality are considered part of the POTW and are covered by the SPDES permit for the POTW. The proposed rule would require owners of POSSs to register their facilities and notify DEC of a change in facility ownership or operation. Furthermore, owners and operators of POSSs would be obligated to properly operate and maintain their facilities; file five day written incident reports; and allow DEC to conduct inspections and copy records. In addition to the specific statutory authority for the rule contained in SPRTK, DEC has general rule making authority pursuant to ECL section 3-0301(2)(m) to effectuate the purposes of the ECL and authority to promulgate regulations with respect to the SPDES program in ECL sections 17-0303(3), 17-0803 and 17-0804.

2. Legislative objectives. The proposed rule accords with the public policy objectives that the Legislature sought to advance by enacting SPRTK. One public policy objective of the Legislature was to protect the public health and the environment. Untreated and partially treated sewage contains pathogens that can cause acute illnesses. The proposed rule would help protect the public health and environment by obligating owners and operators of POTWs and POSSs to report untreated and partially treated sewage discharges to DEC and health authorities within two hours of discovery and for each day until the discharge terminates, irrespective of the area impacted by the discharge. The proposed rule would also require that within four hours of discovery, owners and operators of POTWs and POSSs notify affected municipalities of these discharges and further notify the general public of any such discharges to surface water through appropriate electronic media as determined by DEC. These notifications would continue each day until the discharge terminates, so that municipalities may respond and the public may avoid exposure. Furthermore, the proposed rule accords with the legislative objective to bring POSSs into the SPDES regulatory program by requiring SPDES registrations for POSSs.

The proposed rule does not obligate municipalities to upgrade the infrastructure of POTWs and POSSs or install monitoring equipment because SPRTK expressly limits reporting and notification requirements to discharges that are "knowable with existing systems and models" (ECL section 17-0826-a (1)). The proposed rule, however, does require owners and operators of POTWs and POSSs in specified situations to make reasonable efforts to expeditiously issue CSO advisories to the general public through appropriate electronic media on a waterbody basis.

3. Needs and benefits. The purpose of the rule is to implement ECL section 17-0826-a which is intended to facilitate prompt responses to untreated and partially treated sewage discharges by state and local authorities and inform the public of these discharges so that they may avoid exposure. Sewage discharge reports may be used by DEC to make decisions regarding the closing of shellfish lands and prohibiting shellfish activities. DEC may also use reported information to take enforcement action against wastewater utilities, seeking penalties and permanent corrective measures. Furthermore, NYSDOH and local health departments may use reported information to assess the potential impact on public and private water supplies and to make determinations about regulating bathing beaches.

The rule is necessary to implement SPRTK's two hour reporting and four hour notification requirements and to establish a SPDES registration program for POSSs. The proposed rule would benefit the public health and the environment by obligating owners and operators of POTWs and POSSs to report and disclose untreated and partially treated sewage discharges.

4. Costs. Some municipalities that have POTWs or POSSs (or their contractors) may need to upgrade their computer systems at a cost of approximately $1,000 to comply with the proposed rule's two hour reporting and four hour notification provisions. Moreover, some municipalities may need to spend a de minimis amount for employee services to comply with the rule. Local health departments are expected to bear similar expenses to those associated with reporting of discharges. Furthermore, DEC will need to incur expenses to develop the electronic media to be used by owners and operators of POTWs and POSSs to notify the general public of untreated and partially treated sewage discharges. DEC has selected the NY-ALERT system maintained by the State Office of Emergency Management (SOEM) to implement the reporting and notification requirements of the proposed rule. The necessary upgrade to the NY-ALERT system is expected to cost DEC approximately $50,000. This estimate was supplied by Buffalo Computer Graphics, the NY-ALERT consultant for SOEM. Moreover, NYS Information Technology Services estimates that DEC will need to spend approximately $125,000 to upgrade its own computer systems so that it may post reported information expeditiously to its website as required by SPRTK.

5. Local government mandates. The proposed rule would require owners and operators of POTWs and POSSs to report untreated and partially treated sewage discharges to DEC and health authorities within two hours of discovery, irrespective of the area impacted by the discharge, except partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. POTWs and POSSs would include systems that are owned by "a county, town, city, village, district corporation, special improvement district, sewer authority or agency thereof."

The proposed rule would also obligate owners and operators of POTWs and POSSs to notify the chief elected official of the municipality where the discharge occurred and adjoining municipalities of untreated and partially treated sewage discharges within four hours of discovery and provide that these entities must also notify the general public of any such discharges to surface water within the same four hour time frame through appropriate electronic media as determined by DEC. As with the two hour reporting requirement, these four hour notifications would not apply to partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. For purposes of the municipal notification provision, the proposed rule would define 'municipality' to mean "a city, town or village," and define an 'adjoining municipality' to be "any municipality that is directly adjacent to the municipality in which the discharge occurred." Furthermore, the proposed rule would require owners of POSSs to register their facilities and notify DEC of a change in facility ownership or operation. Finally, owners and operators of POSSs would be obligated to file five day written incident reports; properly operate and maintain their facilities; and allow DEC to conduct inspections and copy records.

6. Paperwork. It is anticipated that the NY-ALERT system or another suitable electronic system will be used by owners and operators of POTWs and POSSs to satisfy both the two hour reporting and four hour notification requirements of the proposed rule. SPDES registrations for POSSs, five day written incident reports, and notifications of a change in POSS ownership or operation would need to be completed on forms prescribed by or acceptable to DEC. The reporting, notification and paperwork requirements of the proposed rule are necessary to implement SPRTK

which expressly mandates two hour reporting and four hour notification requirements and establishes POSSs as a new group of regulated entities.

7. Duplication. Under existing regulations, SPDES permittees are only required to report untreated and partially treated sewage discharges to DEC and the local health department within two hours of discovery if the discharge would affect a bathing area during the bathing season, shellfishing or a public drinking water intake, whereas untreated and partially treated sewage discharges affecting other areas must be reported to DEC, in most instances, within twenty-four hours of discovery (6 NYCRR section 750-2.7(b), (c)). Under the proposed rule, two hour reporting by owners and operators of POTWs and POSSs generally applies to all untreated and partially treated sewage discharges that have been discovered, irrespective of the area impacted by the discharge. The proposed rule would prevent duplication by eliminating 24 hour reporting by POTW SPDES permittees of those discharges currently described in 6 NYCRR section 750-2.7(c) that would now be covered by the new two hour reporting.

8. Alternatives. DEC considered requiring owners of POSSs to obtain SPDES permits rather than registrations for their facilities. This alternative was rejected because SPDES registrations are sufficient to implement SPRTK's reporting and notification requirements for POSSs. DEC also considered requiring municipalities to develop their own systems to comply with SPRTK. This alternative was also rejected due to the many benefits of NY-ALERT. NY-ALERT will be easy for owners and operators of POTWs and POSSs to use and will allow them to satisfy all of SPRTK's reporting and notification obligations for an incident as the same time through a common system. By using NY-ALERT, DEC will be able to track discharges, control computer system security, maintain data quality and satisfy its statutory obligations efficiently. NY-ALERT will also save municipalities the expense of developing their own systems. If DEC switches from NY-ALERT to another electronic system in the future, it will seek a system that provides similar attributes.

9. Federal standards. The proposed rule would exceed federal standards for the same or similar subject areas. The proposed rule would extend the requirement to file five day written incident reports to owners and operators of POSSs which are not currently subject to federal or state five day reporting obligations (40 CFR section 122.41(l)(6); 6 NYCRR section 750-2.7(d)). Furthermore, there is no requirement under federal law that owners and operators of POTWs and POSSs report untreated and partially treated sewage discharges to the government within two hours of discovery or that they notify the municipality where the discharge occurred, adjoining municipalities, or the general public of discharges within four hours of discovery. Federal law also does not provide for expeditious issuance of CSO advisories by owners and operators of POTWs and POSSs. Finally, owners of POSSs are not required by federal law to obtain SPDES registrations for POSSs or inform the government of a change in facility ownership or operation. The rule exceeds federal standards because SPRTK mandates the specific reporting and notification requirements imposed by this rule.

10. Compliance schedule. The rule takes effect upon filing of the rule with the secretary of state and publication of the notice of adoption in the State Register. Regulated entities will be able to comply with the rule as soon as it takes effect.

Regulatory Flexibility Analysis

1. Effect of Rule. All counties, towns, cities, villages, district corporations, special improvement districts, sewer authorities and agencies thereof in the state that own or operate a publicly owned treatment works (POTW) or a publicly owned sewer system (POSS) would be subject to the requirements of this rule. There are approximately 620 POTWs that would be affected, and the Department of Environmental Conservation (DEC) estimates that there are approximately 300 POSSs that would be affected. The rule would extend regulatory oversight to POSSs as DEC does not currently regulate POSSs through its SPDES program. Cities, towns and villages that have POTWs or POSSs or that adjoin these entities would be beneficially affected by the rule as they would benefit from the notification requirements imposed by the rule. No small businesses would be affected by this rule.

2. Compliance Requirements. The rule would require owners and operators of POTWs and POSSs to report untreated and partially treated sewage discharges to the DEC and the local health department, or if there is none, the New York State Department of Health within two hours of discovery. Partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit would not have to be reported. Owners and operators of POTWs and POSSs would also be required to continue reporting for each day after the initial report is made until the discharge terminates, except that on the day the discharge terminates, a report documenting termination of the previously reported discharge may be made in lieu of the discharge report. The current definition of 'municipality' in the existing regulations (6 NYCRR section 750-1.2(a)(51)) would apply to the proposed definition of 'POSS' and continue to apply to the definition of 'POTW' which would be left unchanged. Thus, both POTWs and POSSs would include systems that are owned by a "county, town, city, village, district corporation, special improvement district, sewer authority or agency thereof." The proposed rule, however, would distinguish a POSS from a POTW by defining a POSS as "a sewer system owned by a municipality and which discharges to a POTW owned by another municipality." In contrast, a POTW does not include a municipally owned sewer system unless the sewer system that discharges to the POTW is owned by the same municipality. The proposed rule would also describe the necessary content of two hour reports to the extent knowable with existing systems and models as prescribed by Environmental Conservation Law (ECL) section 17-0826-a(1)(a)-(f).

Furthermore, the proposed rule would obligate owners and operators of POTWs and POSSs to notify the chief elected official, or authorized designee, of the municipality where the discharge occurred and the chief elected official, or authorized designee, of any adjoining municipality of untreated and partially treated sewage discharges within four hours of discovery. Owners and operators of POTWs and POSSs would also be required to continue notifying these municipalities each day that the discharge continues after the date the initial notification is made until the discharge terminates, except that on the day the discharge terminates, a notification that the discharge has terminated may be made in lieu of the discharge notification for that day. The municipal notification requirement would not apply to partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. For purposes of the municipal notification requirement, a 'municipality' would be limited to mean "a city, town or village" and an 'adjoining municipality' would mean "a municipality (i.e., city, town or village) that is directly adjacent to the municipality in which the discharge occurred."

In addition, the rule would require owners and operators of POTWs and POSSs to notify the general public within four hours of discovery of discharges of untreated and partially treated sewage to surface water through appropriate electronic media as determined by DEC, except that no notification is required for partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. Like municipal notifications, owners and operators of POTWs and POSSs would be required to make notifications to the general public for each day that the discharge continues and a termination notice may be made in lieu of a discharge notification on the day the discharge concludes. However, as with the initial public notification, the daily public notifications would be limited to surface water discharges unlike the municipal notifications which would apply to all untreated and partially treated sewage discharges.

The proposed rule does not require POTWs or POSS to upgrade their infrastructure or install monitoring equipment. However, for combined sewer overflows for which real-time telemetered discharge monitoring and detection does not exist, the proposed rule would require owners and operators of POTWs and POSSs to make reasonable efforts to expeditiously issue advisories through appropriate electronic media to the general public when, based on actual rainfall data and predictive models, enough rain has fallen that combined sewer overflows are likely of enough volume to cause potential health concerns for people who may come in contact with the water. These advisories may be made on a waterbody basis rather than by individual combined sewer overflow points.

Under the proposed rule, owners of POSSs would need to obtain State Pollutant Discharge Elimination System (SPDES) registrations for these facilities and notify DEC of a change in facility ownership or operation. Furthermore, owners and operators of POSSs would be required to properly operate and maintain their facilities; file five day written incident reports (as currently required for POTW SPDES permittees and other SPDES permittees); and allow DEC to conduct inspections and copy records.

3. Professional Services. Municipalities that own POTWs and POSSs may need to employ professional services to comply with the rule if existing employees are not sufficient to handle these duties. The services needed under the proposed rule would consist of two hour reporting and four hour notification of untreated and partially treated sewage discharges by owners and operators of POTWs and POSSs; continued reporting and notification by owners and operators of POTWs and POSSs for each day after the initial report or notification is made until the discharge terminates; expeditious advisories to the public by owners and operators of POTWs and POSSs regarding certain combined sewer overflows; filing five day written incident reports by owners and operators of POSSs (as currently required for POTW SPDES permittees and other SPDES permittees); registering of POSSs; and notifying DEC of a change in ownership or operation of POSSs.

4. Compliance costs. There may be some initial capital costs to municipalities (or their contractors) to comply with the rule. These costs would consist of upgrades to computer systems to meet the two hour reporting and four hour notification requirements if existing computer systems are not adequate. It is estimated that the cost to a municipality (or its contractor) to upgrade its computer system to comply with the rule

would be a single expenditure of about $1,000. Approximately 140 smaller municipalities in rural areas (or their contractors) would need to upgrade their computer systems to comply with the rule. It may also be necessary for some municipalities to hire additional employees or to extend the work hours of current employees on an annual basis to comply with the rule if existing staff are unable to handle these duties during current work hours. The pay rate of a qualified employee to handle the duties associated with the rule is estimated to be $34.80 to $60.85 per hour.

There are approximately 620 permitted POTWs and 300 identified POSSs statewide. DEC estimates that 890 municipalities own a single POTW or POSS and that the remaining 30 POTWs and POSSs are owned by municipalities that own more than one of these facilities. DEC anticipates that each POTW and POSS will have, on average, two (2) reportable events per year at a de minimis cost for reporting and record keeping and that 570 of these POTWs and POSSs will be located in smaller rural municipalities. DEC based the above labor costs on use of an alert system that will notify DEC, NYSDOH, local health departments, elected officials, adjoining municipalities, and the general public. The Sewage Pollution Right to Know Act (ECL § 17-0826-a), however, only mandates use of the alert system selected by DEC to satisfy the four hour public notification requirement. Labor costs will be higher if the facility contacts the other necessary parties individually or if the facility experiences a significantly higher number of reportable events. The initial capital costs and continuing compliance costs described above are not expected to vary based upon the type and/or size of the local government bearing these costs.

5. Economic and technological feasibility. Compliance with the rule is expected to be feasible for local governments both economically and technologically. It is expected that local governments will have the ability to finance the costs associated with the rule. Two hour reporting to DEC and health authorities under the proposed rule would be accomplished by electronic entry of information into the NY-ALERT system which will forward the entered information to DEC and health authorities. The NY-ALERT system will also accommodate four hour notification to the chief elected official of the municipality where the discharge occurred, adjoining municipalities and the general public. The NY-ALERT system will not be technologically complex to use and will not require substantial upgrades to the existing computer systems of local governments. If DEC switches to a system other than NY-ALERT in the future, it will seek a system that provides similar attributes.

6. Minimizing adverse impact. The rule is designed to minimize adverse economic impacts to local governments within the context of the statutory mandate. The time frames for two hour reporting and four hour notification in the rule match the time frames set forth in the enabling statute (Environmental Conservation Law (ECL) section 17-0826-a). There are not expected to be any significant costs to local governments to comply with the rule. It is expected that local governments will be able to use existing computer systems to comply with the rule without needing substantial upgrades to these systems. The approaches for minimizing adverse economic impact suggested in SAPA section 202-b(1) and other similar approaches were considered, but ECL section 17-0826-a does not provide for exemptions from coverage, or for differing compliance or reporting requirements or timetables, based upon the resources of the local government. Therefore, no such approaches are contained in the proposed rule. Nevertheless, the rule is written and will be implemented in a manner that minimizes adverse economic impacts to local governments within the parameters of the statutory authority.

7. Small business and local government participation. DEC has complied with SAPA section 202(b)(6) by assuring that small businesses and local governments have had an opportunity to participate in the rule making process. This occurred through posting notice of the proposed rule making on the DEC website; maintaining a public website informing public and private interests of the impact of the rule; and through interaction with owners and operators of POTWs and POSSs, environmental groups, and others. DEC also held Water Management Advisory Committee (WMAC) meetings on the rule which were attended by various stakeholders. Furthermore, the proposed rule will be published in the State Register and the public will be provided with an opportunity to comment on the proposed rule.

8. For rules that either establish or modify a violation or penalties associated with a violation. The entities regulated by the proposed rule will have the ability to satisfy the requirements of the rule and thereby prevent the imposition of penalties as soon as the rule takes effect. No cure period or opportunity for ameliorative action beyond the language already contained in the proposed rule is necessary to provide regulated entities with the ability to immediately comply with the rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas. The rule would apply to all towns and villages in rural areas throughout the state that have publicly owned treatment works (POTWs) or publicly owned sewer systems (POSSs) or that adjoin communities that have POTWs or POSSs.

2. Reporting, recordkeeping and other compliance requirements; and professional services. The rule would require owners and operators of POTWs and POSSs to report untreated and partially treated sewage discharges to the New York State Department of Environmental Conservation (DEC) and the local health department, or if there is none, the New York State Department of Health within two hours of discovery, except partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit would not have to be reported. Owners and operators of POTWs and POSSs would also need to continue reporting for each day after the initial report is made until the discharge terminates, except that on the day the discharge terminates, a report documenting termination of the previously reported discharge may be made in lieu of the discharge report. The definition of 'municipality' in the existing regulations (6 NYCRR section 750-1.2(a)(51)) would apply to the proposed definition of 'POSS' and continue to apply to the definition of 'POTW' which would be left unchanged. Thus, both POTWs and POSSs would include systems that are owned by a "county, town, city, village, district corporation, special improvement district, sewer authority or agency thereof." The proposed rule, however, would distinguish a POSS from a POTW by defining a POSS as "a sewer system owned by a municipality and which discharges to a POTW owned by another municipality." In contrast, a POTW does not include a municipally owned sewer system unless the sewer system that discharges to the POTW is owned by the same municipality. The proposed rule would also describe the necessary content of two hour reports to the extent knowable with existing systems and models as prescribed by Environmental Conservation Law (ECL) section 17-0826-a(1)(a)-(f).

Furthermore, the proposed rule would obligate owners and operators of POTWs and POSSs to notify the chief elected official, or authorized designee, of the municipality where the discharge occurred and the chief elected official, or authorized designee, of any adjoining municipality of untreated and partially treated sewage discharges within four hours of discovery. Owners and operators of POTWs and POSSs would also be required to continue notifying these municipalities each day that the discharge continues after the date the initial notification is made until the discharge terminates, except that on the day the discharge terminates, a notification that the discharge has terminated may be made in lieu of the discharge notification for that day. The municipal notification requirement would not apply to partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. For purposes of the municipal notification requirement, a 'municipality' would be limited to mean "a city, town or village" and an 'adjoining municipality' would mean "a municipality (i.e., city, town or village) that is directly adjacent to the municipality in which the discharge occurred."

In addition, the rule would require owners and operators of POTWs and POSSs to notify the general public within four hours of discovery of discharges of untreated and partially treated sewage to surface water through appropriate electronic media as determined by DEC, except that no notification is required for partially treated sewage discharged directly from a POTW that is in compliance with a DEC approved plan or permit. Like municipal notifications, owners and operators of POTWs and POSSs would be required to make notifications to the general public for each day that the discharge continues and a termination notice may be made in lieu of a discharge notification on the day the discharge concludes. However, as with the initial public notification, the daily public notifications would be limited to surface water discharges unlike the municipal notifications which would apply to all untreated and partially treated sewage discharges.

The proposed rule does not require POTWs or POSS to upgrade their infrastructure or install monitoring equipment. However, for combined sewer overflows for which real-time telemetered discharge monitoring and detection does not exist, the proposed rule would require owners and operators of POTWs and POSSs to make reasonable efforts to expeditiously issue advisories through appropriate electronic media to the general public when, based on actual rainfall data and predictive models, enough rain has fallen that combined sewer overflows are likely of enough volume to cause potential health concerns for people who may come in contact with the water. These advisories may be made on a waterbody basis rather than by individual combined sewer overflow points.

Finally, the proposed rule would establish a State Pollutant Discharge Elimination System (SPDES) registration program for POSSs; require owners and operators of POSSs to properly operate and maintain their facilities; obligate owners and operators of POSSs to file five day written incident reports (as currently required for POTW SPDES permittees and other SPDES permittees); direct owners of POSSs to notify DEC of a change in ownership or operation of their facilities; and provide that DEC has authority to inspect POSSs and copy records. It may be necessary for municipalities in rural areas to employ professional services to carry out the responsibilities associated with the proposed rule if existing staff are insufficient to handle these duties.

3. Costs. There may be some initial capital costs to municipalities or

their contractors (including those in rural areas) to comply with the rule. These costs would consist of upgrades to computer systems to comply with two hour reporting and four hour notification requirements if existing computer systems are not adequate. It is estimated that the cost to a municipality (or its contractor) to upgrade its computer system to comply with the rule would be a single expenditure of about $1,000. Approximately 140 municipalities (or their contractors) will need to upgrade their computer systems to comply with the rule, all of which are located in rural areas. It may also be necessary for some municipalities to hire additional employees or to extend the work hours of current employees on an annual basis to comply with the rule if existing staff are unable to handle these duties during current work hours. The proposed rule would impose two hour reporting and four hour notification requirements on owners and operators of POTWs and POSSs; establish a State Pollutant Discharge Elimination System (SPDES) registration program for POSSs; and obligate owners of POSSs to notify DEC of a change in ownership or operation of the facility. The pay rate of an employee to handle the duties associated with the rule is estimated to be $34.80 to $60.85 per hour.

There are approximately 620 permitted POTWs and 300 identified POSSs statewide. DEC estimates that 890 municipalities own a single POTW or POSS and that the remaining 30 POTWs and POSSs are owned by municipalities that own more than one of these facilities. DEC anticipates that each POTW and POSS will have, on average, two (2) reportable events per year at a de minimis cost for reporting and record keeping and that 570 of these POTWs and POSSs will be located in rural areas. DEC based the above labor costs on use of an alert system that will notify DEC, NYSDOH, local health departments, elected officials, adjoining municipalities, and the general public. The Sewage Pollution Right to Know Act (ECL § 17-0826-a), however, only mandates use of the alert system selected by DEC to satisfy the four hour public notification requirement. Labor costs will be higher if the facility contacts the other necessary parties individually or if the facility experiences a significantly higher number of reportable events. There are not expected to be any significant variations in initial capital costs and annual costs for municipalities in rural areas.

4. Minimizing adverse impact. There are no adverse environmental, public health or other impacts to rural areas associated with the rule. The rule would impose the same compliance, reporting and notification requirements (and associated time frames) upon all owners and operators of POTWs and POSSs statewide. The rule is being carried out in this manner because the enabling legislation, ECL section 17-0826-a, does not distinguish between POTWs and POSSs located in rural areas and those located elsewhere. The approaches suggested by SAPA section 202-bb(2) and other similar approaches were considered, but the statutory authority does not provide for exemptions and imposes the same requirements and timetables on all POTWs and POSSs throughout the state irrespective of their location.

5. Rural area participation. DEC complied with SAPA section 202-bb(7) by providing public and private interests in rural areas with the opportunity to participate in the rule making process. This occurred through posting notice of the proposed rulemaking on the DEC website; maintaining a public website informing public and private interests of the impact of the rule; and through interaction with owners and operators of POTWs and POSSs, environmental groups, and others. The Department also held Water Management Advisory Committee (WMAC) meetings on the rule which were attended by various stakeholders. Furthermore, notice of the proposed rule will be published in the State Register and the public will be provided with an opportunity to comment on the proposed rule.

Job Impact Statement

The rule will not have any substantial adverse impact on jobs or employment opportunities as apparent from the rule's nature and purpose. The rule reiterates and implements the requirements set forth in ECL section 17-0826-a (the Sewage Pollution Right to Know Act) and establishes a SPDES registration program for publicly owned sewer systems. As evident from its subject matter, the rule will not have any adverse impact on jobs or employment opportunities as the new requirements will not hinder jobs or employment opportunities, but rather could necessitate the hiring of additional personnel or the extension of work hours for current employees to meet the requirements of the rule.

Department of Health

EMERGENCY RULE MAKING

Zika Action Plan; Performance Standards

I.D. No. HLT-26-16-00014-E
Filing No. 569
Filing Date: 2016-06-14
Effective Date: 2016-06-14

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

Action taken: Addition of section 40-2.24 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 602, 603 and 619

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

Specific reasons underlying the finding of necessity: Zika virus is newly emerging as a worldwide threat to the public's health, and it is spreading widely in South and Central America. Zika virus has been associated with microcephaly and potentially other birth defects. In particular, there have been reports in Brazil and other countries of microcephaly in infants of mothers who were infected with Zika virus while pregnant. Developing research appears to support this association. Zika virus may also cause a rare disorder called Guillain Barré Syndrome, which can cause paralysis in severe cases. For these reasons, in February 2016, the World Health Organization declared Zika virus a public health emergency of international concern.

Because 80% of cases are asymptomatic, limited control measures exist. Further, although Zika virus is transmitted primarily though the bite of a mosquito, sexual transmission has also been documented.

To date, the Department's Wadsworth Center has conducted tests on samples from more than 1,600 patients, and 49 have been found to be positive for Zika virus. New York has the second highest total of any state in the continental United States after Florida. With the exception of one possible case of sexual transmission, all of the infected patients have been returning travelers from countries where Zika virus is ongoing.

In Central and South America, the Zika virus has been primarily transmitted by a mosquito bite from the species Aedes aegypti. That species is not currently present in New York State; however, a related species of mosquito, Aedes albopictus, is present in New York City, as well as the Counties of Nassau, Rockland, Suffolk, and Westchester.

Because Aedes albopictus is a tropical mosquito, it has difficulty surviving cold winters, limiting its northward spread, but it has adapted to survive in a broader temperature range. Although researchers are currently uncertain if Aedes albopictus can effectively transmit the Zika virus, New York State must prepare for this contingency.

A primary public health objective is to reduce the risk to developing fetuses of pregnant women in New York State. As such, during the spring, summer and fall, it is important that state and local health departments (LHDs) take action to protect all New Yorkers from the Zika virus.

LHDs are integral State partners and play important roles in human surveillance, health education, and mosquito surveillance and control. As a result, it is essential that LHDs are prepared to respond to the threat of Zika virus in their communities. Many LHDs may need to respond to travel associated cases only, because they do not have Aedes albopictus mosquitoes within their borders. However, those counties that do have Aedies Albopictus generally have large populations and a high number of travelers to affected areas.

Accordingly, these emergency regulations require that, as a condition of State Aid for public health work, each LHD must adopt and implement a Zika Action Plan (ZAP) that includes specified elements, but that can also be tailored to the situation within its borders. Those counties that do not have Aedes albopictus must perform human disease monitoring of travel-associated cases and provide education about Zika virus. For those counties that have, or that are at risk for acquiring, Aedes albopictus, additional required activities include: enhanced human disease monitoring and disease control; enhanced education about Zika virus; mosquito trapping, testing and habitat inspection specific to Aedes albopictus; mosquito control; and identification and commitment of staff available to join State-coordinated rapid response teams, which may be deployed to those areas where the Department determines that there is a potential transmission of Zika Virus by mosquitoes.

Thus, to protect the public from the immediate threat posed by Zika virus, the Commissioner of Health has determined it necessary to file these regulations on an emergency basis. State Administrative Procedure Act § 202(6) empowers 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: Zika Action Plan; Performance Standards.

Purpose: To require local health departments to develop a Zika Action Plan as a condition of State Aid.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by sections 602, 603 and 619 of the Public Health Law, Subpart 40-2 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new section 40-2.24, to be effective upon filing with the Secretary, as follows:

§ 40-2.24 Zika Action Plan; performance standards.

(a) By April 15, 2016, the local health department shall adopt and implement a Zika Action Plan (ZAP), in accordance with guidance to be issued by the Department, and which shall include, but not be limited to, the following activities:

(1) for all local health departments:

(i) human disease monitoring; and

(ii) education about Zika Virus Disease; and

(2) in addition, for those local health departments identified by the Department as jurisdictions where mosquitoes capable of transmitting the Zika Virus are currently located or may be located in the future:

(i) enhanced human disease monitoring and disease control;

(ii) enhanced education about Zika Virus Disease;

(iii) mosquito trapping, testing and habitat inspections specific to Aedes albopictus, and for such other species as the Department may deem appropriate;

(iv) mosquito control; and

(v) identification and commitment of staff available to join State-coordinated rapid response teams, which may be deployed to those areas where the Department determines that there is a potential transmission of Zika Virus by mosquitoes.

(b) For so long as determined necessary and appropriate by the Department, local health departments shall update their ZAP plans annually and submit such plans to the Department as part of the Application for State Aid made pursuant to section 40-1.0 of this Part.

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

Article 6 of the Public Health Law (PHL) sets forth the statutory framework for the Department's State Aid program, which partially reimburses local health departments (LHDs) for eligible expenses related to specified public health services. PHL § § 602(4), 603(1), and 619 authorize the commissioner to promulgate rules and regulations to effectuate the provisions of PHL Article 6. PHL § 619 specifies that such regulations shall include establishing standards of performance for core public health services and for monitoring performance, collecting data, and evaluating the provision of such services.

Legislative Objectives:

PHL Article 6 establishes a program that provides State Aid to LHDs to partially reimburse the cost of core public health services, including communicable disease control and emergency preparedness and response.

Needs and Benefits:

Zika virus is newly emerging as a worldwide threat to public health, and it is spreading widely in the Western Hemisphere. Zika virus has been associated with microcephaly and potentially other birth defects. In particular, there have been reports in Brazil and other countries of microcephaly in infants of mothers who were infected with Zika virus while pregnant. Developing research appears to support this association. Zika virus may also cause Guillain-Barré Syndrome, which can cause muscle weakness and sometimes paralysis. For these reasons, in February 2016, the World Health Organization declared the recent cluster of microcephaly and other neurological abnormalities associated with in utero exposure to the Zika virus a public health emergency of international concern.

Because 80% of cases are asymptomatic, limited control measures exist. Further, although Zika virus is transmitted primarily though the bite of a mosquito, sexual transmission has also been documented.

To date, the Department's Wadsworth Center has conducted tests on samples from more than 2,300 patients, and 55 have been found to be positive for Zika virus. New York has the second highest total of any state in the continental United States after Florida. With the exception of one possible case of sexual transmission, all of these infections have occurred in returning travelers from countries with active mosquito-borne transmission of Zika virus.

In the Western Hemisphere, the Zika virus has been primarily transmitted by a mosquito bite from the species Aedes aegypti. That species is not currently established in New York State; however, a related species of mosquito, Aedes albopictus, is established in New York City, as well as Orange, Nassau, Putnam, Rockland, Suffolk, and Westchester Counties. Additionally, Dutchess, Sullivan, and Ulster Counties are located on the northern border of these affected areas.

Because Aedes albopictus is a tropical mosquito, it has difficulty surviving cold winters, limiting its northward spread, but it has adapted to survive in a broader temperature range. Although researchers are currently uncertain if Aedes albopictus can effectively transmit the Zika virus, New York State must prepare for this contingency.

A primary public health objective is to reduce the risk to developing fetuses of pregnant women in New York State. As such, during the spring, summer and fall, it is important that the Department and LHDs take action to protect the health and safety of all New Yorkers from the Zika virus.

LHDs are integral State partners and play important roles in human disease monitoring, response and control; health education and prevention; and mosquito trapping, testing, habitat inspection, and control. As a result, it is essential that LHDs are prepared to respond to the threat of Zika virus in their communities. Many LHDs may need to respond to travel-associated cases only, because they do not have mosquitoes capable of transmitting Zika virus within their borders. However, those counties that do have mosquitoes capable of transmitting Zika virus generally have large human populations and a high number of travelers to affected areas.

Accordingly, these regulations require that, as a condition of State Aid for public health work, each LHD must adopt and implement a Zika Action Plan (ZAP) that includes specified elements, but that can also be tailored to the situation within its borders. Those counties that do not have Aedes albopictus, or other mosquitoes capable of transmitting the Zika virus, must perform human disease monitoring of travel-associated cases and provide education about Zika virus. For those counties that have, or that are at risk for acquiring, Aedes albopictus, or other mosquitoes capable of transmitting the Zika virus, additional required activities include: enhanced human disease monitoring and disease control; enhanced education about Zika virus and its prevention; mosquito trapping, testing and habitat inspection specific to Aedes albopictus, or other mosquitoes capable of transmitting the Zika virus; mosquito control; and identification and commitment of appropriate staff available to join State-coordinated rapid response teams, which may be deployed to those areas where the Department determines that there is a potential transmission of Zika virus by mosquitoes.

Costs:

Although exact costs cannot be predicted at this time, the Department does not expect compliance to result in significant costs with respect to plan development, which can be achieved using existing staff. Preparation time will vary according to the demographics of the jurisdiction served by the LHD. However, the cost of these personnel hours is expected to be greatly outweighed by the benefit to public health. LHDs may incur costs including salaries and related expenditures associated with ongoing human disease monitoring, response and control, as well as public education activities and programs.

Those LHDs identified by the Department as jurisdictions where mosquitoes capable of transmitting the Zika virus are currently located or may be located in the future may incur additional costs, including salaries and related expenditures associated with mosquito trapping, testing, and habitat inspections as well as expenditures related to mosquito control, to the extent such counties are not already performing these activities.

Local Government Mandates:

Although compliance is not strictly mandatory, the adoption, implementation, and annual updating of a ZAP is a condition of State Aid for general public health work. As set forth in the regulation, the activities that must be performed to be eligible for State Aid vary by county, and are described in detail below.

By April 15, 2016 all LHDs must electronically transmit a ZAP to the Department that describes how they will conduct timely education, as well as human disease monitoring and reporting of Zika virus.

For those LHDs identified by the Department as jurisdictions where mosquitoes capable of transmitting the Zika virus are currently located or may be located in the future, their ZAP must include processes and procedures for:

(1) enhanced human disease monitoring, response and control;

(2) enhanced education to the public and health care providers regarding the possibility of local Zika virus transmission and the risk to pregnant women;

(3) mosquito trapping, testing, and habitat inspections;

(4) mosquito control plans tailored to local needs; and

(5) names, roles and contact information of LHD and/or county staff that will join the state-coordinated rapid response teams.

Paperwork:

This regulation requires preparation of a ZAP to respond to an emergency threat to public health.

Duplication:

No relevant rules or legal requirements of the Federal and State governments duplicate, overlap or conflict with this rule.

Alternatives:

The alternative would be to continue a situation in which there is inconsistent approaches across the State with respect to monitoring and control of the spread of the Zika virus.

Federal Standards:

The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

Compliance Schedule:

The regulation became effective upon filing the Emergency Adoption with the Department of State on March 17, 2016. However, LHDs will have until April 15, 2016 to adopt and implement the ZAP.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

Local health departments (LHDs) will be required to develop Zika Action Plans (ZAPs).

Compliance Requirements:

These regulations apply exclusively to local governments. Accordingly, please refer to the Regulatory Impact Statement.

Professional Services:

In response to the mosquito control plan requirement, those LHDs identified by the Department as jurisdictions where mosquitoes capable of transmitting the Zika virus are currently located, or may be located in the future, may need to obtain the services of a commercial pesticide applicator.

Capital Costs and Annual Costs of Compliance:

The Department does not expect compliance to result in significant costs. Compliance can be achieved using existing staff. Preparation time will vary according to the demographics of the jurisdiction served by the LHD. However, the cost of these personnel hours is expected to be greatly outweighed by the benefit to public health.

Economic and Technology Feasibility:

The proposed regulatory changes will not impose any new technology requirements or costs, or otherwise pose feasibility concerns.

Minimizing Adverse Impact:

No adverse impacts have been identified.

Small Business and Local Government Input:

Because of the emergency nature of these regulations, local government input has not been solicited.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement under the proposed regulation. Zika virus represents a significant threat to public health, and the regulation provides the appropriate time for LHDs to adopt and implement their ZAPs. Hence, no cure period is necessary.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

Higher Education Services Corporation

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Tuition Awards for Part-Time Undergraduate Students

I.D. No. ESC-26-16-00012-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 2207.1(d)(1)(i) of Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 666

Subject: Tuition awards for part-time undergraduate students.

Purpose: The purpose of the rule is to conform the provision regarding income to a recent statutory change.

Text of proposed rule: Subparagraph (i) of paragraph (1) of subdivision (d) of section 2207.1 is amended to read as follows:

(i) Income shall mean [the net taxable income as reported in New York State income tax returns for the calendar year next preceding the beginning of the academic year for which an application for an award is made] *that amount determined in accordance with subdivisions one and two of section six hundred sixty-three of the education law*; provided, however, that if persons required to report income to the corporation did not file an appropriate New York State income tax return, or if the return did not include income outside New York State, such persons shall report to the corporation what income would have been had their total income been subject to New York State income tax and had such income tax return been filed.

Text of proposed rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, New York State Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.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.

Consensus Rule Making Determination

This statement is being submitted pursuant to subparagraph (i) of paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (HESC) Notice of Proposed Rule Making seeking to amend section 2207.1(d)(1)(i) to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR).

It is apparent from the nature and purpose of this rule that no person is likely to object to the adoption of the rule as written. Section 2207.1(d)(1)(i) sets forth the definition of income for purposes of awarding tuition grants for part-time undergraduate students as contained in section 663(1) of the Education Law. Part R of Chapter 54 of the Laws of 2016 amended section 663(1). Therefore, it is necessary to amend the regulation to conform to the revised statutory provision.

Consistent with the definition of "consensus rule", as set forth in section 102(11) of the State Administrative Procedure Act, HESC has determined that this proposal, which conforms to non-discretionary provisions, is non-controversial and, therefore, no person is likely to object to its adoption.

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 (Corporation) Notice of Proposed Rulemaking seeking to amend section 2207.1(d)(1)(i) to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR).

It is apparent from the nature and purpose of this rule that it has no impact on jobs and employment opportunities. This rule amends the definition of income for purposes of awarding tuition grants for part-time undergraduate students to conform to a recent statutory change.

The Corporation has determined that this rule will have no substantial adverse impact on any private or public sector jobs or employment opportunities and therefore a full Job Impact Statement is not necessary.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Cost Report Submission and Penalty Changes

I.D. No. PDD-16-16-00001-A
Filing No. 571
Filing Date: 2016-06-14
Effective Date: 2016-07-01

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

Action taken: Amendment of section 635-4.4 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 13.09(b)

Subject: Cost Report Submission and Penalty Changes.

Purpose: To amend requirements for submission of cost reports and penalties for failure to submit cost reports to OPWDD.

Text or summary was published in the April 20, 2016 issue of the Register, I.D. No. PDD-16-16-00001-P.

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

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

Assessment of Public Comment

Cost Report Submission and Penalty Changes

This document contains responses to public comments submitted during the public comment period for proposed regulations concerning cost report submission and penalty changes.

Comment: Commenters expressed an understanding of, and agreement with, the need for providers to file annual certified cost reports (CFRs) timely and accurately.

Response: OPWDD appreciates the commenters' support.

Comment: Commenters recommended that OPWDD give providers an additional month to complete the CFR accurately, prior to the commencement of the 2% penalty, while retaining the date in the proposed regulations for the commencement of the 50% penalty.

Response: The proposed amendments extended the due date to incorporate the 30 day extension period in the current regulations. By eliminating requirements to request an extension and incorporating the additional 30 days into the due date, OPWDD considers this sufficient time for providers to submit cost reports. OPWDD is promulgating the regulations as proposed.

Comment: A commenter expressed that, for fairness, the 2% penalty should be calculated by day, not by month. The commenter added that the provider should not be penalized if its CFR is late by one or more days as most providers try very hard to submit their CFR on time but there may be certain uncontrollable obstacle(s) to doing so.

Response: Implementation of the 2% penalty is not a component of the proposed regulations. The 2% penalty parameters were part of a previously adopted regulation. OPWDD is promulgating the regulations as proposed.

Comment: Commenters expressed concern that the proposed regulations do not contain any provision committing OPWDD to promulgating rates on128;time and prior to the beginning of the rate period. Commenters stated that it is not only an issue of basic fairness that dictates timeframes should apply equally to both providers and government rate setting parties, but such a provision would permit providers to plan their budgets in a timely and appropriate manner, and eliminate the environment of fiscal uncertainty that currently exists.

Response: OPWDD no longer has rulemaking authority to promulgate provider rate methodology and rates. In 2015, a provision of the Mental Hygiene Law was amended to designate the commissioner of the Department of Health with such rulemaking authority. OPWDD will share this comment with the Department of Health. Since OPWDD does not have the rulemaking authority necessary to address this comment, OPWDD is promulgating the regulations as proposed.

Public Service Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Major Water Rate Filing

I.D. No. PSC-26-16-00019-P

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

Proposed Action: The Public Service Commission is considering a proposal filed by Suez Water New York Inc. to make various changes in the rates, charges, rules and regulations contained in United Water New York Inc.'s Schedule for Water Service - P.S.C. No. 1 — Water.

Statutory authority: Public Service Law, section 89-c(1) and (10)

Subject: Major water rate filing.

Purpose: To consider a proposal to increase annual base rates by approximately $11.6 million or 13.7%.

Public hearing(s) will be held at: 9:30 a.m., Aug. 16, 2016 and continuing daily as needed (Evidentiary Hearing)* at Department of Public Service, Three Empire State Plaza, 19th Fl. Board Rm., Albany, NY.

*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.state.ny.gov) under Case 16-W-0130.

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 Commission is considering a proposal filed by Suez Water New York Inc. (SUEZ) which would increase its annual water base rates by approximately $11.6 million or 13.7% for the rate year ending January 31, 2018. SUEZ estimates that the requested increase in revenues will result in a total annual bill increase of $98.04, or 13.2%, for an average residential customer. The initial suspension period for the proposed filing runs through July 24, 2016. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: Five days after the last scheduled public hearing.

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-W-0130SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-26-16-00020-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 QPS 23-10 Development LLC, to submeter electricity at 23-01 42nd Street, Long Island City, 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 23-01 42nd Street, Long Island City, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by QPS 23-10 Development LLC on May 23, 2016, to submeter electricity at 23-01 42nd Street, Long Island City, 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.

(16-E-0320SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Extend the Implementation Date for Its Retail Access Program Cash-out Process

I.D. No. PSC-26-16-00021-P

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

Proposed Action: The Commission is considering a proposal filed by Central Hudson Gas and and Electric Corporation to extend the implementation date for a revised cash-out process for the retail access program in its gas tariff schedule, P.S.C. No. 12.

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

Subject: To extend the implementation date for its retail access program cash-out process.

Purpose: To consider an extension for the implementation of the retail access program cash-out process.

Substance of proposed rule: The Public Service Commission (Commission) is considering a proposal filed by Central Hudson Gas and Electric Corporation (Central Hudson) to extend the deadline for implementation of its revised cash-out process for the retail access program in its gas tariff schedule, P.S.C. No. 12. The Commission's Order Approving Rate Plan, (Rate Order) issued June 17, 2015 in Cases 14-E-0318 and 14-G-0419 directed Central Hudson to file tariff amendments for a revised cash-out process for its retail access program no earlier than April 2016. Central Hudson complied with this directive in its Rate Year 1 filing made on June 30, 2015 with the expectation that the revised cash-out process would be implemented by November 2016. Due to necessary programming changes needed to effectuate this new process, Central Hudson is requesting an extension of the implementation date to April 2017. The proposed amendments go into effect on July 1, 2016, on a temporary basis, until approved by the Commission. 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.

(14-G-0319SP3)