

# 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.

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## Education Department

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

#### Teacher Certification

**I.D. No.** EDU-18-16-00010-EP

**Filing No.** 417

**Filing Date:** 2016-04-19

**Effective Date:** 2016-04-19

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

**Proposed Action:** Amendment of sections 52.21 and 80-1.5(c) of Title 8 NYCRR.

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

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

**Specific reasons underlying the finding of necessity:** Despite the high pass rates on the new and redeveloped certification examinations by candidates who have completed preparation programs and have been recommended for certification, the field has expressed concern about the pass rates for candidates who have not completed a preparation program and have not yet been recommended for certification. In response to concerns from the field regarding the expiration of the current safety nets on June 30, 2016, the Department has presented emergency regulations to extend the existing safety nets for an additional year to ensure that candidates have notice of the safety net options for these exams while the Department reexamines the current certification examinations.

Because the Board of Regents meets at scheduled intervals, the earliest

the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 202(1) and (5), is the July 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the July Regents meeting is July 27, 2016, the date a Notice of Adoption would be published in the State Register. However, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to ensure that teacher candidates who will be applying for certification from now until June 30, 2017, have timely and sufficient notice that, if they fail one or more of the following new and redeveloped certification examinations (the ALST, the EAS, the edTPA and/or the required CST, if they meet one or more of the safety net options in lieu of retaking the failed examination, they may receive an initial certificate.)

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

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

**Text of emergency/proposed rule:** 1. Subdivision (c) of section 80-1.5 of the Regulations of the Commissioner of Education shall be amended, effective April 19, 2016, to read as follows:

(c) Notwithstanding any applicable provisions of Subparts 80-1, 80-3, 80-4 and 80-5 of this Part or any other provision of rule or regulation to the contrary, a candidate who applies for and meets all the requirements for a certificate on or before [June 30, 2017] *June 30, 2018*, except that such candidate does not achieve a satisfactory level of performance on one or more of the new certification examinations (the academic literacy skills test and/or the teacher performance assessment) or the revised content specialty examination(s), as prescribed by the Commissioner, that is/are required for the certificate title sought, and such examination(s) was/were taken and failed on or after September 1, 2013 through [June 30, 2016] *June 30, 2017*, may instead use one or more of the following safety net options, in lieu of retaking one or more of such new and/or revised certification examinations:

(1) Teacher performance assessment. A candidate who takes and fails to achieve a satisfactory level of performance on the teacher performance assessment (after completing and submitting for scoring the teacher performance assessment), may, in lieu of retaking the teacher performance assessment:

(i) receive a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment and prior to [June 30, 2016] *June 30, 2017*; or

(ii) pass the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective), provided the candidate has taken and failed the teacher performance assessment prior to [June 30, 2016] *June 30, 2017*.

(2) Academic Literacy Skills Test. A candidate who takes and fails to achieve a satisfactory level of performance on the academic literacy skills test may, in lieu of retaking the academic literacy skills test, submit an attestation on or before [June 30, 2016] *June 30, 2017*, on a form prescribed by the commissioner, [and signed by a dean or chief academic officer of a higher education institution or the substantial equivalent,] attesting that the candidate has:

(i) demonstrated comparable skills to what is required by the academic literacy skills test through course completion by completing a minimum of three semester hours in coursework satisfactory to the commissioner; and

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

(3) Content Specialty Examination. A candidate who takes and fails to achieve a satisfactory level of performance on any required revised content specialty examination 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 after receipt of his/her failing score on the revised content specialty tests and prior to [June 30, 2016] *June 30, 2017*; or

(ii) pass the predecessor content specialty examination 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] *June 30, 2017*.

2. Subclause (1) of clause (b) of subparagraph (iv) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education, shall be amended, to read as follows:

(1) For the [2015-2016] *2016-2017* academic year, in the event that fewer than 80 percent of students, who have satisfactorily completed an institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination they have completed, such program shall submit to the department a professional development plan that describes how the program plans to improve the readiness of faculty and the pass rate for candidates on the examinations required for a teaching certificate. Further, for the 2015-2016 academic year, the department shall conduct a registration review in the event that fewer than 70 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed. For the [2016-2017] *2017-2018* academic year and thereafter, the department shall conduct a registration review in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed. For purposes of this clause, students who have satisfactorily completed the institution's program shall mean students who have met each educational requirement of the program, excluding any institutional requirement that the student pass each required examination of the New York State teacher certification examinations for a teaching certificate in order to complete the program. Students satisfactorily meeting each educational requirement may include students who earn a degree or students who complete each educational requirement without earning a degree. For determining this percentage, the department shall consider the performance on each certification examination of those students completing an examination not more than five years before the end of the academic year in which the program is completed or not later than the September 30th following the end of such academic year, academic year defined as July 1st through June 30th, and shall consider only the highest score of individuals taking a test more than once.

**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 July 17, 2016.

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

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

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

#### 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 305(1) and (2) empowers the Commissioner of Education to be the chief executive officer of the state system of education and authorizes the Commissioner to execute educational policies determined by the Regents.

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 3004(1) requires the Commissioner to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in the all public schools of the state.

Education Law section 3006(1)(b) provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

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 extending the current safety net provisions for an additional year for the teacher certification examinations that are required for certain teachers who are seeking to be certified in New York State.

##### 3. NEEDS AND BENEFITS:

At the November and December 2009 Board of Regents meetings, the Board approved a number of initiatives for the purpose of transforming teaching and learning in New York State. One of those initiatives was to strengthen the certification examinations for teachers and school leaders. In May 2010, the Board reaffirmed this direction for the new teacher certification examinations, which included the development of the Academic Literacy Skills Test (ALST), Educating All Students examination (EAS), redevelopment of the Content Specialty Tests (CSTs) and the implementation of a teacher performance assessment (edTPA).

In April 2012, Governor Cuomo established an Education Reform Commission that was charged with reviewing a broad range of education policy issues. The Commission made several recommendations, one of which was the creation of a "bar"-like exam, indicating the importance of ensuring that only qualified individuals are given the state's approval to educate our children.

In an effort to implement this requirement, new and revised certification exams were developed. The development of each certification examination follows a design and development process that is consistent with the standards of (i) the American Psychological Association; (ii) the National Council on Measurement in Education; and (iii) the American Educational Research Association. Separately, each certification examination has also gone through the process of content validation, job analysis and construct validity. The new examinations were specifically developed to be more rigorous and raise the entry bar to the teaching profession. In addition, each examination was developed to assess specific areas of knowledge, skills and abilities that teachers need to be effective in the classroom. Studies have repeatedly shown that students taught by better prepared teachers achieve better results.

##### Description of the New and Revised Examinations

The edTPA, a performance examination, is a multiple-measure examination system comprised of three tasks: (i) planning instruction and examination; (ii) instructing and engaging students in learning; and (iii) assessing student learning.

The ALST measures skills and competencies in reading and writing aligned to college and career readiness standards, including: (i) analyzing text structure; (ii) writing to sources; and (iii) using valid reasoning and relevant evidence to support claims.

The EAS measures skills and competencies that address: (i) diverse student populations; (ii) English language learners; (iii) students with disabilities and other special learning needs; (iv) teacher responsibilities; and (v) school-home relationships.

The CSTs measure content knowledge in a particular subject area, and are aligned with the New York State learning standards.

Throughout the development of the new and revised certification examinations, the Department worked closely with the field. Over 2,000 New York State educators and New York State teacher preparation program faculty have directly participated in various stages of the development process, including the establishment of the examination frameworks, validation and review of the frameworks, development and review of examination items, content review and bias review panels, and the establishment of performance standards for the examinations. As part of this process, the new and redeveloped assessments have been extensively field tested by over 10,000 New York State teacher candidates.

Supports, Accommodations and Professional Development for the New Examinations

The Department also established support systems for the field to ensure each college and university has the information necessary to adequately prepare its teacher candidates for success on the new and revised certification examinations.

However, many programs continued to share concerns that they have not had enough time to make changes to their programs and curricula. Therefore, the Board requested that the Department propose safety net options for the ALST, EAS and the CSTs. In response to the Board's request, the Department proposed multiple options for safety nets applicable to each of the following certification examinations: ALST, EAS and the CSTs and an extension of the edTPA safety net to exist conterminously with any other safety nets covering the remainder of the teacher certifica-

tion examinations. At the April meeting, the Board instructed the Department to present an emergency amendment to the Commissioner's Regulations at its May 2015 meeting necessary to create and implement the following safety nets:

#### Academic Literacy Test ("ALST"):

Currently, the safety net for the ALST allows a candidate who takes and fails the ALST on or before June 30, 2016 to submit an attestation on or before June 30, 2016, on a form prescribed by the commissioner and signed by a dean or chief academic officer of a higher education institution or the substantial equivalent, attesting that the candidate has demonstrated comparable skills to what is required by the ALST through course completion and the candidate received a cumulative grade of a 3.0 or higher, or the substantial equivalent, in such coursework. The proposed amendment extends this safety net to June 30, 2017. However, the attestation no longer must be signed by the dean or chief academic officer of a higher education institution.

#### Educating All Students Test ("EAS"):

The current safety net for the EAS revises the passing standard to establish a "safety net cut score" which would be operative through June 30, 2016. The proposed amendment extends the "safety net cut score" for the EAS to June 30, 2017.

#### Redeveloped Content Specialty Tests ("CSTs")

The CSTs measure content knowledge in a particular subject area, and are aligned with the New York State learning standards. Currently, there are 41 CSTs, of which 20 have been redeveloped. Currently, the safety net for the CSTs allows candidates who have taken and failed a redeveloped CST to take and pass the predecessor of the redeveloped CST currently required through June 30, 2016. The proposed amendment extends this safety net until June 30, 2017.

#### Extension of the Existing edTPA Safety Net

At its April 2014 meeting, the Board of Regents created a safety net allowing candidates who take and fail the edTPA to either (i) take and pass the ATS-W; or (ii) submit evidence of having achieved a satisfactory passing score on the ATS-W on or before April 30, 2014, in lieu of retaking and achieving a passing score on edTPA through June 30, 2015. As initially implemented, the safety net required that candidates complete all other requirements for certification on or before June 30, 2015 to take advantage of the edTPA safety net.

At its January 2015 Board of Regents meeting, the Board proposed an amendment to the safety net regulation to allow candidates an additional year, until June 30, 2016, to complete all other certification requirements so long as they (i) took and failed the edTPA and (ii) either took and passed the ATS-W; or submitted evidence of having achieved a satisfactory passing score on the ATS-W on or before April 30, 2014. At its April 2015 meeting, the Board of Regents extended the safety net for the edTPA until June 30, 2016 to be coterminous with the other safety nets. The proposed amendment extends the safety net for the edTPA for an additional year until June 30, 2017.

#### Professional Development and Corrective Action Plans

Section 52.21(b)(2)(iv)(b)(1) of the Commissioner's Regulations requires the Department to conduct a registration review of a program in the event that fewer than 80% of students, who have completed the program and have also completed one or more of the required certification examinations, pass each such examination that they have completed. At the April 2014 meeting, the Board approved waiving the 80% passage requirement for corrective action for students who take the edTPA during the 2013-2014 and 2014-2015 academic years, and instead requires programs where fewer than 80% of students pass the edTPA to submit a professional development plan to the Department that describes how the program will work to improve student outcomes. This was extended to the 2015-2016 academic year.

The Department recommends extending this safety net policy to all teacher certification examinations for the 2016-2017 academic year by requiring a professional development plan to be submitted to the Department in the event that fewer than 80 percent of students who have satisfactorily completed the institution's program pass one or more of the required certification examinations, and requiring a corrective action plan be submitted to the Department in the event that fewer than 70% of such students pass these required examinations.

#### 4. COSTS:

Cost to the State: None.

Costs to local government: None.

Cost to private regulated parties: Candidates who take and fail the ALST, EAS edTPA and/or CST, will need to pay a fee for the alternative safety net examination, if they choose to use the safety net option. The proposed amendment will provide additional flexibility for candidates who take and fail the certification exams on their first attempt.

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 the ALST on or before June 30, 2017, the candidate may submit an attestation on or before June 30, 2017, on a form prescribed by the Commissioner, attesting that the candidate has demonstrated comparable skills to what is required by the ALST.

#### 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 exams 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*

We are nearing the expiration of all available Safety Nets for the certification exams. In order to address continuing the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the certification exams, the Board is requesting that the department extend the safety net options for the teacher certification exams for an additional year, until June 30, 2017. The proposed amendments provide an extension for the alternative methods of meeting certification requirements for those candidates that take and fail the certification exams.

Currently, the safety net for the ALST allows a candidate who takes and fails the ALST on or before June 30, 2016 to submit an attestation on or before June 30, 2016, on a form prescribed by the commissioner, attesting that the candidate has demonstrated comparable skills to what is required by the ALST through course completion and the candidate received a cumulative grade of a 3.0 or higher, or the substantial equivalent, in such coursework. The proposed amendment extends this safety net to June 30, 2017.

The current safety net for the EAS revises the passing standard to establish a "safety net cut score" which would be operative through June 30, 2016. The proposed amendment extends the "safety net cut score" for the EAS to June 30, 2017.

The CSTs measure content knowledge in a particular subject area, and are aligned with the New York State learning standards. Currently, there are 41 CSTs, of which 20 have been redeveloped. Currently, the safety net for the CSTs allows candidates who have taken and failed a redeveloped CST to take and pass the predecessor of the redeveloped CST currently required through June 30, 2016. The proposed amendment extends this safety net until June 30, 2017.

At its April 2014 meeting, the Board of Regents created a safety net allowing candidates who take and fail the edTPA to either (i) take and pass the ATS-W; or (ii) submit evidence of having achieved a satisfactory passing score on the ATS-W on or before April 30, 2014, in lieu of retaking and achieving a passing score on edTPA through June 30, 2015. As initially implemented, the safety net required that candidates complete all other requirements for certification on or before June 30, 2015 to take advantage of the edTPA safety net.

At its January 2015 Board of Regents meeting, the Board proposed an amendment to the safety net regulation to allow candidates an additional year, until June 30, 2016, to complete all other certification requirements so long as they (i) took and failed the edTPA and (ii) either took and passed the ATS-W; or submitted evidence of having achieved a satisfactory passing score on the ATS-W on or before April 30, 2014. At its April 2015 meeting, the Board of Regents extended the safety net for the edTPA until June 30, 2016 to be coterminous with the other safety nets. The proposed amendment extends the safety net for the edTPA for an additional year until June 30, 2017.

Section 52.21(b)(2)(iv)(b)(1) of the Commissioner's Regulations requires the Department to conduct a registration review of a program in the event that fewer than 80% of students, who have completed the program and have also completed one or more of the required certification examinations, pass each such examination that they have completed. At the April 2014 meeting, the Board approved waiving the 80% passage requirement for corrective action for students who take the edTPA during the 2013-2014 and 2014-2015 academic years, and instead requires

programs where fewer than 80% of students pass the edTPA to submit a professional development plan to the Department that describes how the program will work to improve student outcomes. For the 2015-2016 school year, the Board approved waiving the 80% requirement for corrective action, but requiring a professional development plan, and requiring corrective action in the event fewer than 70% of such students pass each of the required examinations.

The Department recommends extending this safety net policy to all teacher certification examinations for the 2016-2017 academic year by requiring a professional development plan to be submitted to the Department in the event that fewer than 80 percent of students who have satisfactorily completed the institution's program pass one or more of the required certification examinations, and requiring a corrective action plan be submitted to the Department in the event that fewer than 70% of such students pass these required examinations.

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 the new certification exams prior to June 1, 2017, 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:**

We are nearing the expiration of all available Safety Nets for the certification exams. In order to address continuing the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the certification exams, the Board is requesting that the department extend the safety net options for the teacher certification exams for an additional year, until June 30, 2017. The proposed amendments provide an extension for the alternative methods of meeting certification requirements for those candidates that take and fail the certification exams.

Currently, the safety net for the ALST allows a candidate who takes and fails the ALST on or before June 30, 2016 to submit an attestation on or before June 30, 2016, on a form prescribed by the commissioner and signed by a dean or chief academic officer of a higher education institution or the substantial equivalent, attesting that the candidate has demonstrated comparable skills to what is required by the ALST through course completion and the candidate received a cumulative grade of a 3.0 or higher, or the substantial equivalent, in such coursework. The proposed amendment extends this safety net to June 30, 2017. However, the attestation no longer must be signed by the dean or chief academic officer of a higher education institution.

The current safety net for the EAS revises the passing standard to establish a "safety net cut score" which would be operative through June 30, 2016. The proposed amendment extends the "safety net cut score" for the EAS to June 30, 2017.

The CSTs measure content knowledge in a particular subject area, and are aligned with the New York State learning standards. Currently, there are 41 CSTs, of which 20 have been redeveloped. Currently, the safety net for the CSTs allows candidates who have taken and failed a redeveloped CST to take and pass the predecessor of the redeveloped CST currently required through June 30, 2016. The proposed amendment extends this safety net until June 30, 2017.

At its April 2014 meeting, the Board of Regents created a safety net allowing candidates who take and fail the edTPA to either (i) take and pass the ATS-W; or (ii) submit evidence of having achieved a satisfactory passing score on the ATS-W on or before April 30, 2014, in lieu of retaking and achieving a passing score on edTPA through June 30, 2015. As initially implemented, the safety net required that candidates complete all other requirements for certification on or before June 30, 2015 to take advantage of the edTPA safety net.

At its January 2015 Board of Regents meeting, the Board proposed an amendment to the safety net regulation to allow candidates an additional year, until June 30, 2016, to complete all other certification requirements so long as they (i) took and failed the edTPA and (ii) either took and passed the ATS-W; or submitted evidence of having achieved a satisfactory passing score on the ATS-W on or before April 30, 2014. At its April 2015 meeting, the Board of Regents extended the safety net for the edTPA until June 30, 2016 to be coterminous with the other safety nets. The proposed amendment extends the safety net for the edTPA for an additional year until June 30, 2017.

Section 52.21(b)(2)(iv)(b)(1) of the Commissioner's Regulations requires the Department to conduct a registration review of a program in the event that fewer than 80% of students, who have completed the program and have also completed one or more of the required certification examinations, pass each such examination that they have completed. At the April 2014 meeting, the Board approved waiving the 80% passage requirement for corrective action for students who take the edTPA during the 2013-2014 and 2014-2015 academic years, and instead requires programs where fewer than 80% of students pass the edTPA to submit a professional development plan to the Department that describes how the program will work to improve student outcomes. For the 2015-2016 school year, the Board approved waiving the 80% requirement for corrective action, but requiring a professional development plan, and requiring corrective action in the event fewer than 70% of such students pass each of the required examinations.

The Department recommends extending this safety net policy to all teacher certification examinations for the 2016-2017 academic year by requiring a professional development plan to be submitted to the Department in the event that fewer than 80 percent of students who have satisfactorily completed the institution's program pass one or more of the required certification examinations, and requiring a corrective action plan be submitted to the Department in the event that fewer than 70% of such students pass these required examinations.

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

##### **3. COSTS:**

The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department; except that candidates who take and fail the edTPA or the CST will have to pay another certification examination fee to take advantage of the safety net option.

##### **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**

We are nearing the expiration of all available Safety Nets for the certification exams. In order to address continuing the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the certification exams, the Board is requesting that the department extend the safety net options for the teacher certification exams for an additional year, until June 30, 2017.

The Department also recommends extending the safety net policy for corrective action on higher institutions whose to all teacher certification examinations for the 2016-2017 academic year by requiring a professional development plan to be submitted to the Department in the event that fewer than 80 percent of students who have satisfactorily completed the institution's program pass one or more of the required certification examinations, and requiring a corrective action plan be submitted to the Department in the event that fewer than 70% of such students pass these required examinations.

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.

## **NOTICE OF EMERGENCY**

### **ADOPTION**

### **AND REVISED RULE MAKING**

### **NO HEARING(S) SCHEDULED**

#### **Examinations for Teacher Certification**

**I.D. No.** EDU-05-16-00003-ERP

**Filing No.** 418

**Filing Date:** 2016-04-19

**Effective Date:** 2016-04-19

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(notsubdivided), 215(not subdivided), 3001(2), 3004(1) and 3009(1)

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

**Specific reasons underlying the finding of necessity:** Despite the high pass rates on Parts One and Three of the new Multi-Subject Content Specialty Test (7-12), the field has expressed concern about the pass rates for candidates on Part Two of the examination. In response to the field's concerns, the proposed amendment provides a safety net option for candidates who pass Parts One and Three, but fail Part Two of the Multi-Subject Content Specialty Test (7-12). The safety net option will exist continuously 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. Therefore, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to ensure that teacher candidates who will be applying for certification from now until June 30, 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, 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 meeting and revised at the April 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:** To provide a safety net for candidates who take and fail Part Two: Mathematics of the new Multi-Subject: Secondary Teachers Grades 7-12 Content Specialty Test (CST) which is required for Students with Disabilities. Grades 7-12, Generalist Teacher Certification.

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

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

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

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

(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 as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on February 3, 2016, I.D. No. EDU-05-16-00003-EP. The emergency rule will expire June 17, 2016.

**Emergency rule compared with proposed rule:** Substantial revisions were made in section 80-1.5(d).

**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 Avenue, 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 Avenue, Albany NY 12234, (518) 486-3633, email: regcomments@nysed.gov

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

#### Revised 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, and signed by a dean, chief academic officer, or the substantial equivalent at the college/university of a higher education institution, attesting that the candidate has demonstrated comparable mathematics coursework at the college/university.

##### 7. DUPLICATION:

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

## 8. ALTERNATIVES:

There were no significant alternatives and none were considered.

## 9. FEDERAL STANDARDS:

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

## 10. COMPLIANCE SCHEDULE:

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

**Revised 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 was taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

**Revised 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.

**Revised 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 one was 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](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.

**NOTICE OF ADOPTION**

**New York State Seal of Biliteracy**

**I.D. No.** EDU-04-16-00003-A

**Filing No.** 416

**Filing Date:** 2016-04-19

**Effective Date:** 2016-05-04

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

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

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

**Subject:** New York State Seal of Biliteracy.

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

**Text of final rule:** Subdivision (h) of section 100.5 of the Regulations of the Commissioner of Education is added, effective May 4, 2016, as follows:

(h) *New York State Seal of Biliteracy.*

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

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

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

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

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

- (1) a World Language teacher,
- (2) an English Language Arts (ELA) teacher,
- (3) an English for Speakers of Other Languages (ESOL) teacher,
- (4) a guidance counselor, and
- (5) an administrator;

(b) The SBC shall:

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

(2) create a timeline for all activities pertaining to the Seal of Biliteracy program including, but not limited to, communications, a

student advisement schedule, and dates for important benchmarks throughout the program year;

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

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

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

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

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

(4) Student requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AP – Advanced Placement Examination (minimum score 4)

IB – International Baccalaureate (minimum score 5)

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

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

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

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

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

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

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

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

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

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

*(iv) provide transcripts from a school in a foreign country showing at least three years of instruction in the student's home/native language in Grade 8 or beyond, with equivalent grade average of B or higher.*

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

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

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

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

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

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 100.5(h)(1), (2), (3) and (4).

**Revised rule making(s) were previously published in the State Register on February 10, 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 Avenue, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

#### **Revised Regulatory Impact Statement**

Since publication of a Notice of Proposed Rule Making in the State Register on January 27, 2016, the proposed rule has been revised as follows:

In section 100.5(h)(3)(i)(a)(1), a typographical error has been corrected by substituting the term "World Language teacher" for "world language teacher."

In section 100.5(h)(4)(ii)(b)(1)(iv), relating to "Area 2: Criteria for Demonstrating Proficiency in a World Language", in the phrase "provide transcripts from a school in a foreign country showing at least three years of instruction in the student's home/native language in Grade 6 or beyond, with equivalent grade average of B or higher" the reference to "Grade 6" was changed to "Grade 8". This change was made to ensure consistency with the higher level of instruction that the proposed rule requires from students in order to demonstrate proficiency in a World Language.

In section 100.5(h)(4)(ii)(b)(1)(iii) deleted, as redundant, the word "Spanish" at the end of the phrase "DELE – Diplomas of Spanish as a Foreign Language through Cervantes Institute of NYC Spanish."

In addition, for purposes of grammar and clarity, commas were inserted as follows:

(1) In section 100.5(h)(1), lines 8- 9, after the phrase "the value of diversity";

(2) In section 100.5(h)(2), between "Native American Languages" and "native languages";

(3) In section 100.5(h)(3)(i)(b)(2), after the phrase "but not limited to" and after "a student advisement schedule";

(4) In section 100.5(h)(4)(ii), after the phrase "listed in subparagraph (i) of this paragraph"; and

(5) In section 100.5(h)(4)(ii)(a)(2), after the term "scholarly essay."

The above changes do not require any changes to the previously published Regulatory Impact Statement.

#### **Revised Regulatory Flexibility Analysis**

Since publication of a Notice of Proposed Rule Making in the State Register on January 27, 2016, the proposed rule has been revised as set forth in the Statement Concerning the Regulatory Impact Statement.

The aforementioned revisions do not require any changes 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 has been revised as set forth in the Statement Concerning the Regulatory Impact Statement.

The aforementioned revisions do not require any changes 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 has been revised as set forth in the Statement Concerning the Regulatory Impact Statement.

The proposed revised rule is necessary to implement Education Law section 815 by establishing requirements for a State Seal of Biliteracy to recognize high school graduates who have attained a high level of proficiency in listening, speaking, reading, and writing in one or more languages, in addition to English. The proposed revised rule relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed revised rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

#### **Initial Review of Rule**

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

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

#### **Assessment of Public Comment**

Since publication of a Notice of Proposed Rule Making in the State Register on January 27, 2016 and a Notice of Revised Rule Making in the State Register on February 10, 2016, the State Education Department received the following comments:

##### **1. COMMENT:**

Comments reflected strong support for the Seal of Biliteracy, for recognizing the achievement of high school graduates who obtain high levels of proficiency in multiple languages, encouraging school districts to recognize bilingualism as an asset, and acknowledging the diversity of student strengths by implementing a point system which allows students to demonstrate proficiency through a variety of methods.

##### **DEPARTMENT RESPONSE:**

No response is necessary as the comment is supportive.

##### **2. COMMENT:**

In order to recognize the rigorous work completed by students in College Now, early college and dual enrollment programs, Seal of Biliteracy criteria should award one point toward the English proficiency requirement for the completion of a college-English composition course with a passing grade.

##### **DEPARTMENT RESPONSE:**

Under the proposed regulations, the Seal of Biliteracy criteria awards one point for scoring a 3 or above on the Advanced Placement (AP) English examination which tests students' skills at the college level. However, the Department will take the comment's recommendation under consideration for a possible future rulemaking.

##### **3. COMMENT:**

In order to recognize the rigorous work completed by students in College Now, early college and dual enrollment programs, Seal of Biliteracy criteria should award one point toward the world language proficiency requirement by completing a college literature course in a language other than English with a passing grade.

## DEPARTMENT RESPONSE:

The Seal of Biliteracy awards one point towards demonstration of world language proficiency to students who complete a Checkpoint C level World Language course. A college literature course in a language other than English would be considered a Checkpoint C level language course. A student would be required to receive a grade of 85 or higher or comparable score using another scoring system set by the district and approved by the Commissioner, for both the coursework and final examination consistent with Checkpoint C standards.

## 4. COMMENT:

The Seal of Biliteracy should set forth unique requirements for all low incidence languages that may not have a written code, similar to the unique requirements proposed for Native American languages.

## DEPARTMENT RESPONSE:

The Department acknowledges that low incidence languages may be difficult to assess for proficiency. As stated in the proposed regulations, "special allowances may be necessary to accommodate the unique characteristics of certain languages. In cases where language assessments across all three modes of communication (interpersonal, interpretive and presentational) may not be appropriate or available, school districts may substitute a different assessment that meets the intent of the NYS Seal of Biliteracy". Under this special allowance, students seeking the Seal of Biliteracy in languages not characterized by the use of listening, speaking, reading, or for which there is no writing system, will demonstrate proficiency on an assessment of modalities that characterize communication in such languages.

## 5. COMMENT:

One point toward the world language proficiency requirement should be awarded to students who earn a 3 on the AP World Language exam. Under the proposed regulations, a 4 or above on the AP World Language exam is required to earn a point. Most universities accept a 3 or higher on the AP World Language exam as a criteria of admission and to award credit. Also, only a 3 or above is required on the AP English exam to earn a point for English proficiency under the proposed regulations.

## DEPARTMENT RESPONSE:

Although colleges and universities may award credit for scoring a 3 on an AP World Language examination, a score of 4 or higher on the AP World Language examination is required for students to demonstrate proficiency at the Intermediate High level (according to the proficiency guidelines established by the American Council on the Teaching of Foreign Languages). By contrast, a score of 3 or higher on the Advanced Placement English examination meets the Intermediate High level for English proficiency.

## 6. COMMENT:

Commenter recommends that the Department provide students with financial assistance to take the exams required to earn points toward the Seal of Biliteracy.

## DEPARTMENT RESPONSE:

Examinations are not required to attain the New York State Seal of Biliteracy. If a student elects to take an examination, financial assistance may be determined at the district level.

## 7. COMMENT:

The Seal of Biliteracy should create additional opportunities for English Language Learners (ELLs)/ Multilingual Learners (MLLs) to demonstrate proficiency in a broader array of languages. Many students have high levels of proficiency in languages not currently widely available for study, and thus have limited opportunity to demonstrate such proficiency. This challenge is exacerbated by the fact that many such students may not have transcripts from their home countries.

## DEPARTMENT RESPONSE:

The Department will take this recommendation under consideration for possible future creation of additional avenues for ELLs/MLLs and other students to demonstrate proficiency in a broader array of languages.

## 8. COMMENT:

Three of the four languages most widely available for study in New York State schools (French, German, Italian, and Spanish) are not those languages most commonly spoken by ELLs/MLLs. This disadvantages ELLs/MLLs in the ability to obtain the Seal of Biliteracy. Therefore, opportunities to study those languages most frequently spoken by New York's ELLs/MLLs - Spanish, Chinese, Arabic, Bengali, and Haitian Creole - must be expanded, as well as the over 200 languages spoken by New York's ELLs/MLLs. These opportunities may be created via bilingual programs at all levels, as well as home language and literature classes at the secondary level.

## DEPARTMENT RESPONSE:

The Department agrees that language programs are essential to the education of all students and is committed to supporting and expanding bilingual education in New York State schools. Through the flexibility of the Seal of Biliteracy criteria, students who speak languages not commonly taught in New York State schools still have the opportunity to earn

the Seal through a variety of avenues. The Department will also continue to work with districts to expand opportunities to study the full array of languages spoken by New York's ELLs/MLLs.

## 9. COMMENT:

To expand opportunities for students who speak low incidence languages and languages for which there is no written code, it is necessary to innovate sound multilingual programs focused on those languages. In so doing, the expertise of English for Speakers of Other Languages (ESOL) teachers currently working with students speaking such languages must be leveraged.

## DEPARTMENT RESPONSE:

The Department will take this recommendation under consideration for possible future expansion of multilingual programs in low incidence languages and for which there is no written code.

## 10. COMMENT:

ESOL certified teachers, like bilingual teachers, can contribute in unique ways to achieve positive outcomes for ELLs/MLLs in the development of multilingual skills and resources. This connection must be clarified and emphasized.

## DEPARTMENT RESPONSE:

If the proposed regulations are approved by the Board of Regents, the Department will take this recommendation into consideration for future guidance documents.

## 11. COMMENT:

Comment desires clarification whether a district must first obtain approval from the Department before granting the Seal of Biliteracy.

## DEPARTMENT RESPONSE:

A district must complete a form available from the Office of Bilingual Education and World Languages to notify the Department of its intent to establish a Seal of Biliteracy program. Additionally, in order to award the Seal of Biliteracy, a district must complete an end-of-year form which will include relevant data regarding its program and its student recipients.

## 12. COMMENT:

Comment desires clarification whether 12th grade students in the 2015-16 school year are eligible for the Seal of Biliteracy.

## DEPARTMENT RESPONSE:

If the proposed regulations are passed, students who graduate in 2016 who meet the requirements set forth therein are eligible for the Seal of Biliteracy.

## 13. COMMENT:

Comment desires clarification whether it is permissible for districts to form a Seal of Biliteracy committee prior to passage of the proposed regulations.

## DEPARTMENT RESPONSE:

It is permissible for districts to form a Seal of Biliteracy Committee in advance of the proposed regulation's passage, provided that their activities conform to the parameters set forth in the proposed regulations.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Authorize NY Higher Education Institutions to Participate in SARA and Approve Out-of-State Institutions for Distance Learning

I.D. No. EDU-18-16-00004-P

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

**Proposed Action:** Addition of Part 49 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 210-c and 212(3); Finance Law, section 97-III; L. 2015, ch. 220

**Subject:** Authorize NY Higher Education Institutions to participate in SARA and approve out-of-state institutions for distance learning.

**Purpose:** The purpose of the proposed amendment is to set forth the requirements for authorization of New York State higher education institutions to participate in State Authorization Reciprocity Agreement (SARA) and the requirements for the approval of out-of-State institutions, who do not participate in SARA to provide distance education to New York residents.

**Text of proposed rule:** A new Part 49 is added to the Regulations of the Commissioner of Education, effective July 27, 2016, to read as follows:

Part 49

Post-Secondary Distance Education

Subpart 49-1

Approval of New York State Degree-Granting Institutions to Operate Under a State Authorization Reciprocity Agreement (SARA).

§ 49-1.1. Definitions.

For purposes of this Subpart:

(a) Accredited shall mean holding institutional accreditation from an accreditor recognized by the U.S. Department of Education.

(b) Approved or Approval means the Department has granted approval for an institution to operate distance education programs under the terms of the state authorization reciprocity agreement (SARA), pursuant to section 210-c of the Education Law.

(c) Complaint means a formal complaint received by the Department in writing that asserts that an institution has violated the terms and policies of SARA and/or the provisions of this Subpart, are being violated by a person, institution, state, agency or other organization or entity operating under SARA.

(d) Distance education means instruction offered by any means where the student and faculty member are in separate physical locations. It includes, but is not limited to, online, interactive video or correspondence courses or programs. It does not include intrastate distance education activity.

(e) Institution means a postsecondary higher education institution that is authorized by the Regents to confer degrees in New York State.

(f) Legal domicile means the state in which the institution's principal campus holds its institutional accreditation and, if applicable, its federal Office of Postsecondary Education Identifier (OPEID) number.

(g) State authorization reciprocity agreements or SARA means an agreement among member states, districts and U.S. territories that establishes comparable national standards for interstate offering of post-secondary distance-education courses and programs.

(h) SARA policies and standards means the SARA Policies and Standards February 17, 2016 as adopted by National Council of State Authorization Reciprocity Agreements, 3005 Center Green Drive, Suite 130 Boulder, Colorado 8030 - Available at the Office of Counsel, New York State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York, 12234.

§ 49-1.2. Institutional Eligibility Requirements. To be eligible for approval to operate under SARA an institution shall:

(a) be legally domiciled in New York State and be authorized by the Board of Regents to confer post-secondary degrees in New York State and offer registered degree programs in New York State;

(b) possess and maintain institutional accreditation, by an accrediting body recognized by the U.S. Secretary of Education, including distance education within the scope of its recognition;

(c) for non-public institutions only, possess a financial responsibility index score from the U.S. Department of Education that is 1.5 or above;

(d) agree to be bound by the SARA policies and standards and to be responsible for the actions of any third-party providers used by the institution to engage in operations under SARA;

(e) agree to remain responsible for compliance with the requirements of SARA and applicable laws and regulations, regardless of whether the institution engages in operations under the agreement itself, or through a third-party provider;

(f) agree to notify the department of any adverse actions by its accreditor or any negative changes to its accreditation status;

(g) agree to notify in writing all students in a course or program that customarily leads to professional licensure or certification, or which a student could reasonably believe leads to such licensure or certification, whether or not the course or program meets requirements for licensure or certification in the state where the student resides. If an institution does not know whether the course or program meets licensure requirements in the student's state of residence, the institution may meet this requirement by informing the student in writing and providing the student the contact information for the appropriate state licensing board(s);

(h) agree, in cases where the institution cannot fully deliver the instruction for which a student has contracted, to provide a reasonable alternative for delivering the instruction or reasonable financial compensation for the education they did not receive;

(i) agree to provide any data requested by the department, to the extent permitted by applicable law, to assist the department in resolving any complaints arising from its students and to abide by decisions of the department, in order for the department to effectively monitor any activities under the agreement;

(j) upon application submission, pay to the department any state fees for application review and SARA participation as prescribed in section 49-1.7 of this Subpart;

(l) pay an annual SARA participation fee to the National Council for SARA (NC-SARA), as required by the SARA policies and standards; and

(m) report any other information required by SARA and/or this section.

§ 49-1.3. Initial Application for Approval to Operate Under SARA.

(a) An institution may apply to the department for approval to operate under SARA on a form and in a timeframe prescribed by the Commissioner, with the required fees as prescribed in section 49-1.7 of this Subpart.

(b) All complete applications will be reviewed by the department to determine whether the institution meets the eligibility requirements set forth in this section. Following the department's review on an institution's application for approval, the department shall take one of the following actions:

(1) Approval. The department shall approve all institutions that meet the requirements set forth in this section. The term of approval shall be one year from the date of notification of approval, and may be renewed annually thereafter based on a renewal application. An extension of such term may be granted at the discretion of the Commissioner.

(2) Disapproval. The department shall disapprove all institutions that do not meet the requirements set forth in this section. If an institution's application for participation in SARA is disapproved, the department will provide the institution with a written reason for such disapproval. The institution may appeal any disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner, and submit additional information in support of its position. An institution that has been disapproved, may reapply to the Department no earlier than 180 days from the date of disapproval.

(3) Provisional approval. The department may, at its discretion, provisionally approve institutions for participation in SARA, subject to the specific terms for provisional approval identified in the SARA policies and standards.

§ 49-1.4. Application for Renewal of Approval to Operate Under SARA.

(a) An institution may apply to the department for renewal of its approval to operate under SARA on a form and in a timeframe prescribed by the Commissioner, with the required fees as prescribed in section 49-1.7 of this section no later than 60 days prior to the expiration of its existing term of approval. An extension of the submission period for renewal of approval may be granted at the discretion of the Commissioner.

(b) The department shall review all properly submitted renewal applications, and any other relevant data in the department's possession related to the institution's compliance with the SARA policies and standards. Following such review, the department will make a determination consistent with the options and procedures identified in section 49-1.3(b) of this Subpart. The institution may appeal such disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Department, and submit additional information in support of its position.

(c) Institutions that do not apply for renewal before expiration of its approval are no longer approved to operate under SARA.

(d) Institutions no longer approved to operate under SARA may reapply to the Department no earlier than 180 days from the date of disapproval or non-renewal.

§ 49-1.5. Loss of Eligibility and Removal.

(a) The department may remove an institution from approval to operate under SARA, based on a finding that the institution is no longer eligible or is out of compliance with SARA policies and standards. The institution may appeal a disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner, and submit additional information in support of its position. An institution that is removed from eligibility during an approval period shall receive no fee refund, except as otherwise provided in section 49-1.7 of this Subpart.

§ 49-1.6. Complaints. Complaints against New York State institutions operating under SARA shall follow the following procedures:

(a) Complaints against a New York State institution shall first be subject to an institution's own procedures for resolving complaints.

(b) If a person bringing a complaint to an institution is not satisfied with the outcome of the institutional process for handling complaints, a complaint (except for complaints about grades or student conduct violations) may be made to the department, on a form prescribed by the Commissioner.

(c) The department shall review and resolve complaints in accordance with the SARA policies and standards.

(d) The department may impose as a penalty, refunds or other corrective action, to resolve complaints.

(e) Nothing in this section precludes the state from simultaneously using its laws of general application, including laws of consumer protection and fraud prevention, to pursue action against an institution that violates those laws.

§ 49-1.7. Fee Schedule.

(a) New York State institutions seeking approval to operate under SARA shall be subject to the following annual fees to obtain and/or maintain state participation in SARA:

| Institution's total full-time equivalent (FTE) enrollment as shown in the Federal Integrated Postsecondary Education Data System (IPEDS) | Total Annual Fee |
|--|------------------|
| Under 2,500 FTE enrollment   | \$5,000          |
| 2,500 – 9,999 FTE enrollment   | \$7,000          |

10,000 or more FTE enrollment

\$9,000

(b) The annual fees for approval to operate under SARA shall be due upon the submission of an application for initial approval or renewal as prescribed in sections 49-1.3 and 49-1.4 of this Subpart.

(c) If the department determines that an institution's application is disapproved; the institution will be refunded its annual fee, less \$2000, which represents the costs to the Department for application review.

(d) In addition to the fees prescribed in (a) of this section, institutions that have been approved by the Department to participate in SARA shall be subject to the annual fees required by the SARA policies and standards, which shall be made payable to the National Council for SARA.

(e) The department shall periodically review, and if necessary revise this fee schedule to ensure that it is sufficient to meet the state administrative costs of State participation in SARA.

#### Subpart 49-2

Approval of Out-of-State Post-Secondary Institutions to Offer Distance Education to New York State Residents

##### § 49-2.1 Approval of the Department.

(a) Any institution legally domiciled in a State other than New York State that seeks to offer any educational credit-bearing post-secondary instruction, courses, or degree programs through distance education to New York State residents shall obtain approval to operate in this State from the Department. This includes institutions that are operating in New York State under section 3.56 of the Rules of the Board of Regents (permission to operate) that seek to offer distance education programs in this State.

(1) Post-secondary institutions that enrolled New York State residents in its distance education programs on or before the effective date of this Subpart, shall have six months from the effective date of this Subpart to seek and obtain department approval to continue to operate such programs to New York State residents. An extension of the six-month time period may be granted in limited circumstances, at the discretion of the Commissioner.

(2) All institutions with New York State residents enrolled in its distance education programs on or before the effective date of this Subpart, that have not received department approval by the expiration of the time period in paragraph (1) of this subdivision, must cease enrolling new students, and shall phase-out instruction for students who are currently enrolled in such programs until such students have completed the distance education program they are enrolled on the effective date of this section.

(b) Exemption. Any institution that is identified by a member state as participating in SARA is exempt from the application procedures and fees identified in this Part, and are instead subject to the SARA policies and standards.

##### § 49-2.2. Definitions.

For purposes of this Subpart only:

(a) Accredited shall mean holding institutional accreditation from an accreditor recognized by the U.S. Department of Education.

(b) Approved or Approval means approval of an institution to offer its distance education programs to New York State residents.

(c) Complaint means a formal assertion in writing that the terms of approval are being violated by a person, institution, state, agency or other organization or entity operating under the terms of this agreement.

(d) Distance education means credit-bearing postsecondary instruction offered by any means where the student and faculty member are in separate physical locations. It includes, but is not limited to, online, interactive video or correspondence courses or programs. It does not include intrastate distance education activity.

(e) Institution means a degree-granting postsecondary entity legally domiciled in a state other than New York State.

(f) Interregional Guidelines for the Evaluation of Distance Education means the guidelines developed by the Council of Regional Accrediting Commissions (C-RAC) in February 2011, published by the Middle States Commission on Higher Education, 3624 Market Street, Philadelphia, PA 19104 - Available at the Office of Counsel, New York State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234.

(g) Legal domicile or legally domiciled means the state in which the institution's principal campus holds its institutional accreditation and, if applicable, its federal Office of Postsecondary Education Identifier (OPEID) number.

§ 49-2.3. Institutional Eligibility. An institution applying to the Department for approval to offer credit-bearing post-secondary courses or degree programs to New York State residents through distance education pursuant to this Subpart must:

(a) be legally domiciled in a state other than New York or a United States territory and hold proper authorization from such state/territory to offer degree-granting programs and confer degrees in such state/territory;

(b) be a U.S. degree-granting institution that holds institutional accreditation from an accrediting association recognized by the U.S. Secretary of Education with distance education within its scope of recognition;

(c) possess a financial responsibility index score from the U.S. Department of Education that is 1.5 or above;

(d) agree to abide by the Interregional Guidelines for the Evaluation of Distance Education as defined in § 49-2.2(f) of this Subpart;

(e) agree to be responsible for the actions of any third-party providers used by the institution to offer distance education to New York State residents;

(f) agree to notify the department of any adverse actions by its accreditor or any negative changes to its accreditation status;

(g) agree to provide any data requested by the department, to the extent permitted by applicable law for the purposes of monitoring activities or responding to or resolving complaints;

(h) agree to work with the Department, other state agencies, and accreditors to resolve any complaints, and to abide by decisions of the Department or other state agencies regarding complaint resolution, including by not limited to paying any fines or other corrective actions imposed;

(i) agree to notify in writing all students in a course or program that customarily leads to professional licensure or certification, or which a student could reasonably believe leads to such licensure or certification, that the institution outside of New York State, it is not able to recommend graduates for licensure or certification in New York State, does not know whether the course or program meets licensure requirements in New York State, and providing the student the contact information for the appropriate state licensing or certification board(s);

(j) agree, in cases where the institution cannot fully deliver the instruction for which a student has contracted, to provide a reasonable alternative for delivering the instruction or reasonable financial compensation for the education they did not receive;

(k) agree to pay a non-refundable fee as prescribed by the department, for the review and processing of an institution's application;

(l) If deemed approved by the Commissioner, agree to pay a non-refundable fee as prescribed by the department, for the maintenance of ongoing administrative costs; and

(m) agree to cease and desist all operations, including offering any distance education programs to New York State residents, upon notification from the department that the institution has lost its eligibility to offer such programs under this Subpart.

(n) Waiver. The Commissioner, at her/his sole discretion, may waive one or more eligibility requirements identified in this section, provided that the institution can establish, in the determination of the Commissioner, that it has met the substantial equivalent of a requirement under this Subpart.

##### § 49-2.4. Initial Application for Approval to Offer Distance Education.

(a) An institution shall apply to the department for approval to offer distance education on a form and in a timeframe prescribed by the Commissioner, with the required fees as prescribed in section 49-2.8 of this Subpart.

(b) All properly submitted applications will be reviewed by the department to determine whether an institution meets the eligibility requirements set forth in this section. Following the department's review on an institution's application for approval, the department shall take one of the following actions:

(1) Approval. The department shall approve all institutions that meet the requirements set forth in this section. The term of approval shall be one year from the date of notification of approval, and may be renewed annually thereafter based on a renewal application. An extension of such term may be granted at the discretion of the Commissioner.

(2) Disapproval. The department shall disapprove all institutions that do not meet all of the requirements set forth in this section. If an institution's application to offer distance education in this State is disapproved, the department will provide the institution with a written reason for disapproval. Within 10 days of the date of the written notification of disapproval. The institution may appeal a disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner, and submit additional information in support of its position.

An institution that has been disapproved, may reapply to the Department no earlier than 180 days from the date of disapproval.

##### § 49-2.5. Renewal Application.

(a) An approved institution that seeks to renew its approval authority shall apply to the department on a form and in a timeframe prescribed by the Commissioner, with the required fees as prescribed in section 49-2.8, no later than 60 days prior to the expiration of its existing term of approval. An extension of the submission period for renewal may be granted at the discretion of the Commissioner.

(b) The department shall review all properly submitted renewal ap-

lications, and any other relevant data in the department's possession related to the institution's compliance with eligibility requirements and other indicators of good standing. Following such review, the department will make a determination on the renewal application consistent with the options in section 49-2.3(b) of this Subpart. The institution may appeal a disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner, and submit additional information in support of its position.

(c) Institutions that do not apply for renewal before the expiration of its approval period are no longer approved to operate distance education programs in this State.

§ 49-2.6. Loss of Eligibility and Revocation.

(a) The department may revoke an institution's approval authority under this Subpart, based on a finding that the institution no longer meets the requirements of this Subpart and/or based on any one or number of complaints received, that raise a substantial question as to the institution's ability to offer distance education programs to New York State residents. The institution may appeal a disapproval to the Commissioner or his/her designee in a timeframe and manner prescribed by the Commissioner, and submit additional information in support of its position.

An institution that has had its approval revoked during an approval period receives no fee refund, except as otherwise provided for in section 49-2.7.

§ 49-2.7. Complaints. Complaints relating to an institution that has been approved by the Department to offer distance education to New York residents shall follow the following procedures:

(a) Complaints against an approved institution shall first be subject to institution's own procedures for resolving complaints.

(b) If a person bringing a complaint against an institution is not satisfied with the outcome of the institutional process for handling complaints, a complaint (except for complaints about grades or student conduct violations) may be made to the department, in a form prescribed by the Commissioner.

(c) The Department shall review such complaints and may impose as a penalty, refunds or other corrective action, to resolve complaints.

(d) Nothing in this section precludes the state from simultaneously using its laws of general application, including laws of consumer protection and fraud, to pursue action against an institution that violates those laws.

§ 49-2.8. Fee Schedule.

(a) Institutions seeking approval from the Department to offer distance education to New York State residents under this Subpart shall be subject to the following state fees:

| Application Review Fees | Annual Approval Fee | Total Annual Fee |
|-------------------------|---------------------|------------------|
| \$7,000                 | \$10,000            | \$17,000         |

(b) The total annual fee of \$17,000 shall be due upon the submission of an application for approval or renewal as required by this Subpart. The annual application review fee is non-refundable. Upon a department determination to disapprove an application; the department will refund the annual approval fee.

(c) The department shall periodically review, and if necessary revise this fee schedule to ensure that it is sufficient to meet the state administrative costs of approval and oversight of out-of-state distance education programs offered pursuant to this Subpart.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kirti Goswami, New York State Education Department, Room 148, 89 Washington Avenue, Albany, New York 12047, (618) 474-8966, email: legal@nysed.gov

**Data, views or arguments may be submitted to:** Peg Rivers, New York State Education Department, Room 979, 89 Washington Avenue, Albany, New York 12047, (518) 408-1118, email: regcomments@nysed.gov

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

**Regulatory Impact Statement**

1. STATUTORY AUTHORITY:

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

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

Ed.L. 210-c, as added by Chapter 220 of the Laws of 2015, sets forth the requirements for the State to enter into interstate reciprocity agreements for postsecondary distance education, including the State Authorization Reciprocity Agreement (SARA) and establishes the requirements for institutional eligibility for admission to SARA.

Ed.L. 212(3) authorizes the Department to charge fees for licenses and permits.

Ed.L. 215 authorizes the Commissioner to require reports from schools under State educational supervision.

State Finance Law 97-III, as added by Chapter 220 of the Laws of 2015, establishes the interstate reciprocity for post-secondary distance education account and authorizes the state comptroller to receive for deposit any appropriation and/or fees for services and expenses incurred by the State Education Department in conducting evaluations of post-secondary distance education conducted pursuant to the interstate reciprocity agreement and processing any complaints related thereto and for participating in such interstate agreement. It also authorizes and directs the State to receive for deposit to the credit of such account, any appropriation and/or fees established in regulations for expenses incurred by the department in conducting evaluations, processing complaints and/or other administrative functions related to postsecondary distance education conducted by the department for out-of-state institutions seeking approval to offer distance education in New York.

Chapter 220 of the Laws of 2015 authorizes the Department to enter into interstate reciprocity agreements and/or regional compacts for post-secondary distance education programs and to charge a fee to participating in-state institutions and non-participating out-of-state institutions that offer distance education.

2. LEGISLATIVE OBJECTIVES:

The proposed addition of Part 49 to the Commissioner's Regulations is necessary to implement Chapter 220 of the Laws of 2015 and establishes the procedures and process for New York State higher education institutions to participate in SARA and for the approval of out-of-state institutions to provide distance education to New York residents.

3. NEEDS AND BENEFITS:

Providing State oversight for interstate postsecondary distance education has proved challenging, due to the patchwork of different regulations across individual states, and limited individual State capacity to monitor these activities. For example, many states require detailed approval and review processes and annual fees amounting to tens of thousands of dollars or more for New York State IHEs seeking to offer distance education to their residents. New York State, on the other hand, has not previously required out-of-state institutions of higher education to be approved to offer distance education to New York residents. Thus, while it is currently costly and cumbersome for New York State's IHEs to offer distance education in other states, it is disproportionately easy for out-of-state IHEs to offer distance education to New York residents without any initial screening or quality assurance approvals required.

Through participation in SARA, New York is advancing a multi-layered approach to quality assurance and consumer protection in New York. SARA sets minimum quality standards for the provision of postsecondary distance education where there were previously no requirements. In addition, under SARA, the Department will have new staff capacity specifically dedicated to the quality review and complaint management processes for interstate postsecondary distance education. In collaboration with the four higher education sectors, and to complement the Department's efforts, the State will benefit from a national network of support from other SARA state portal agencies responsible for the same.

Proposed Amendment: New York State IHEs and SARA – Proposed Subpart 49-1

By joining SARA, the Department will be setting minimum initial quality and accountability standards, as agreed to through the SARA polices and standards, for New York State IHEs to offer credit-bearing postsecondary distance education in other SARA states. Under the terms of SARA, out-of-state IHEs participating in SARA will be held to the same initial quality and accountability standards in order to receive approval to offer distance education to New York State residents.

When the Department, on behalf of the State, joins SARA, it will begin accepting applications from New York State IHEs for voluntary participation in SARA. Subpart 49-1 of the proposed regulations provides for procedures and fees for New York State IHEs to participate in SARA and set for the eligibility requirements for institutions seeking to participate in SARA, consistent with Ed.L. § 210-c and the national policies and standards of SARA.

Once New York State institutions apply and are approved by the Department for participation in SARA, they will be authorized to offer their registered distance education programs in all other states that are participating in SARA without any additional costs in any of the other states in which they wish to operate. There are currently 36 states participating in SARA and several others are considering joining and/or pursuing the necessary state legislation to do so.

Once the Department joins SARA, it will be responsible for managing a complaint process for complaints received against New York State IHEs offering distance education under the SARA agreement. Other states that participate in SARA have established comparable State processes for managing complaints for IHEs from other states that participate in SARA which will provide the Department with a national network of support for quality assurance and complaint management across SARA states.

The fee structure presented in the draft regulations reflects the costs required by the Department to carry out the administrative and oversight work of SARA on behalf of New York State IHEs and the costs to maintain State-level membership which is required for the State to participate in SARA. This fee structure is reasonable in relation to the type and nature of the work required of the Department to carry out required SARA activities, including a robust complaint management process. Since there are currently 36 states participating in SARA, this annual Department fee will be significantly lower than the costs for New York State IHEs to seek individual state approval to offer their distance education program outside of New York State.

**Approval of Distance Education for Non-SARA IHEs – Proposed Subpart 49-2**

While SARA sets minimum initial quality and accountability standards for offering interstate credit-bearing postsecondary distance education, there remain a few states that are not in SARA. Additionally, there may be a number of IHEs in SARA states that have elected not to join SARA. For those IHEs that are not in SARA and that seek approval to offer distance education to New York State residents, the Department would be responsible for initial screening and ensuring that these non-SARA IHEs meet the same or comparable initial quality and accountability standards as IHEs approved to operate under SARA.

Subpart 49-2 of the proposed regulations provides for procedures and fees to enable out-of-state IHEs that are not in SARA to obtain approval to offer credit-bearing distance education instruction, courses, or programs to New York residents. The minimum eligibility and quality standards set forth in this Subpart are comparable to those expected for IHEs that participate in SARA. So, in other words, an out-of-state institution that does not meet the standards to participate in SARA would not meet the standards established in this section and would not be approved to offer distance education to New York residents.

The fee structure presented in this Subpart of the proposed regulations reflects the costs required by the Department to carry out the initial and quality review of out-of-state applicants, the costs to maintain a basic level of oversight and data collection, and the costs associated with renewal reviews. This fee structure is reasonable in relation to the type and nature of the work required of the Department, and is comparable to those currently charged by other states for New York State IHEs to receive approval (for example, Michigan charges annual fees of \$10,000; Oregon charges biennial fees of \$7,000 and requires a separate surety bond).

There are many out-of-state IHEs that currently enroll New York State residents in credit-bearing postsecondary distance education programs. In order not to disadvantage New York State residents who are currently enrolled in these programs, the proposed regulation includes the following:

**Grace Period**

The proposed regulation includes a six-month grace period from the effective date of the regulation for an out-of-state IHE to actively work toward obtaining Department approval. During this period, an IHE may continue to operate its distance education programs to students currently enrolled in its programs. However, if the IHE does not obtain approval during this grace period, the institution will be prohibited from enrolling additional New York State residents until such time as approval is granted.

**Phase-out Period**

Should an out-of-state IHE currently enrolling New York residents chose not to apply for approval, or be disapproved by the Department for offering credit-bearing postsecondary distance education to New York residents, the IHEs will be prohibited from enrolling new students from New York and the IHE will only be allowed to offer its distance education programs to New York residents who are currently enrolled in its programs for the purposes of course or degree completion and phasing out of its operation in New York.

**4. COSTS:**

a. **Costs to State government:** The 2016-2017 State Budget appropriated funds to the Department for the purposes of implementing SARA and Chapter 220 of the Laws of 2015. The also authorizes the Department to charge any necessary fees for services and expenses incurred by the Department in conducting evaluations, processing complaints or performing other administrative functions related to the review of post-secondary distance education conducted by out-of-state institutions seeking approval to offer distance education to students in New York who do not participate in an interstate reciprocity agreement. This revenue will allow the Department to obtain the staff necessary to effectively evaluate, approve and oversee these distance education programs. Without this additional staff, the Department will not be able to perform these additional duties necessary to participate in SARA. Because the law authorizes the Department to establish fees consistent with the cost of implementing the proposed amendments, the new law will be self-supporting and therefore have no significant impact on the State’s Financial Plan.

b. **Costs to local government:** The proposed amendment does not impose any costs on local governments.

c. **Costs to private regulated parties:** Subpart 49-1 contains the fee schedule that applies to New York State IHEs choosing to seek approval to operate under SARA, based on the institutions total full-time equivalent (FTE) enrollment as follows:

| Institution’s total full-time equivalent (FTE) enrollment as shown in the Federal Integrated Postsecondary Education Data System (IPEDS) | Total Annual Fee |
|--|------------------|
| Under 2,500 FTE enrollment   | \$5,000          |
| 2,500 – 9,999 FTE enrollment   | \$7,000          |
| 10,000 or more FTE enrollment  | \$9,000          |

Subpart 49-2 contains the fee schedule that applies to out-of-state institutions seeking approval from the Department to offer distance education to New York residents as follows:

| Application Review Fees | Annual Approval Fee | Total Annual Fee |
|-------------------------|---------------------|------------------|
| \$7,000                 | \$10,000            | \$17,000         |

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:**

The proposed amendment involves an application process for New York State IHE’s seeking participation in SARA and an application process for out-of-state institutions seeking approval to offer distance education to New York residents.

**7. DUPLICATION:**

The rule does not duplicate existing State or Federal requirements.

**8. ALTERNATIVES:**

The proposed amendment implements Chapter 220 of the Laws of 2015. Therefore, no alternatives were considered.

**9. FEDERAL STANDARDS:**

There are no federal standards governing reciprocity agreements for state authorization of distance education.

**10. COMPLIANCE SCHEDULE:**

It is anticipated that the proposed amendment will be presented for adoption at the July 2016 Regents meeting, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act. If adopted at the July 2016 meeting, the proposed amendment will take effect on July 27, 2016.

**Regulatory Flexibility Analysis**

(a) **Small businesses:**

**1. EFFECT OF RULE:**

If adopted by the Board of Regents at the July 2016 Board of Regents meeting, the proposed amendment will take effect on July 27, 2016. At this time, there will be a six-month grace period which is included in the proposed regulation, allowing out-of-state institutions to work toward obtaining Department approval. If the institution does not obtain approval during this period, the institution will be prohibited from enrolling additional New York state residents until such time as approval is granted. In addition, there will be a phase-out period which applies to out-of-state IHEs currently enrolling New York State residents who choose not to apply for approval—these IHEs will be prohibited from enrolling new students from New York State and the IHE will only be allowed to offer its distance education programs to New York State residents who are currently enrolled in its programs for the purposes of course or degree completion and phasing out of its operation in New York.

**2. COMPLIANCE REQUIREMENTS:**

Providing State oversight for interstate postsecondary distance education has proved challenging, due to the patchwork of different regulations across individual states, and limited individual State capacity to monitor these activities. For example, many states require detailed approval and review processes and annual fees amounting to tens of thousands of dollars or more for New York State IHEs seeking to offer distance education to their residents. New York State, on the other hand, has not previously required out-of-state institutions of higher education to be approved to offer distance education to New York State residents. Thus, while it is currently costly and cumbersome for New York State’s IHEs to offer distance education in other states, it is disproportionately easy for out-of-state IHEs to offer distance education to New York State residents without any initial screening or quality assurance approvals required.

Through participation in SARA, New York State is advancing a multi-

layered approach to quality assurance and consumer protection in New York State. SARA sets minimum quality standards for the provision of postsecondary distance education where there were previously no requirements. In addition, under SARA, the Department will have new staff capacity specifically dedicated to the quality review and complaint management processes for interstate postsecondary distance education. In collaboration with the four higher education sectors, and to complement the Department’s efforts, New York State will benefit from a national network of support from other SARA state portal agencies responsible for the same.

**Proposed Amendment:**

**New York State IHEs and SARA – Proposed Subpart 49-1**

By joining SARA, the Department will be setting minimum initial quality and accountability standards, as agreed to through the SARA policies and standards, for New York State IHEs to offer credit-bearing postsecondary distance education in other SARA states. Under the terms of SARA, out-of-state IHEs participating in SARA will be held to the same initial quality and accountability standards in order to receive approval to offer distance education to New York State residents.

When the Department, on behalf of the State, joins SARA, it will begin accepting applications from New York State IHEs for voluntary participation in SARA. Subpart 49-1 of the proposed regulations provides for procedures and fees for New York State IHEs to participate in SARA and set for the eligibility requirements for institutions seeking to participate in SARA, consistent with § 210-c of the Education Law and the national policies and standards of SARA.

Once New York State institutions apply and are approved by the Department for participation in SARA, they will be authorized to offer their registered distance education programs in all other states that are participating in SARA without any additional costs in any of the other states in which they wish to operate. There are currently 36 states participating in SARA and several others are considering joining and/or pursuing the necessary state legislation to do so.

Once the Department joins SARA, it will be responsible for managing a complaint process for complaints received against New York State IHEs offering distance education under the SARA agreement. Other states that participate in SARA have established comparable State processes for managing complaints for IHEs from other states that participate in SARA which will provide the Department with a national network of support for quality assurance and complaint management across SARA states.

The fee structure presented in the draft regulations reflects the costs required by the Department to carry out the administrative and oversight work of SARA on behalf of New York State IHEs and the costs to maintain State-level membership which is required for the State to participate in SARA. This fee structure is reasonable in relation to the type and nature of the work required of the Department to carry out required SARA activities, including a robust complaint management process. Since there are currently 36 states participating in SARA, this annual Department fee will be significantly lower than the costs for New York State IHEs to seek individual state approval to offer their distance education program outside of New York State.

**Approval of Distance Education for Non-SARA IHEs – Proposed Subpart 49-2**

While SARA sets minimum initial quality and accountability standards for offering interstate credit-bearing postsecondary distance education, there remain a few states that are not in SARA. In addition, there may be a number of IHEs in SARA states that have elected not to join SARA. For those IHEs that are not in SARA and that seek approval to offer distance education to New York State residents, the Department would be responsible for initial screening and ensuring that these non-SARA IHEs meet the same or comparable initial quality and accountability standards as IHEs approved to operate under SARA.

Subpart 49-2 of the proposed regulations provides for procedures and fees to enable out-of-state IHEs that are not in SARA to obtain approval to offer credit-bearing distance education instruction, courses, or programs to New York State residents. The minimum eligibility and quality standards set forth in this Subpart are comparable to those expected for IHEs that participate in SARA. So, in other words, an out-of-state institution that does not meet the standards to participate in SARA would not meet the standards established in this section and would not be approved to offer distance education to New York residents.

The fee structure presented in this Subpart of the proposed regulations reflects the costs required by the Department to carry out the initial and quality review of out-of-state applicants, the costs to maintain a basic level of oversight and data collection, and the costs associated with renewal reviews. This fee structure is reasonable in relation to the type and nature of the work required of the Department, and is comparable to those currently charged by other states for New York State IHEs to receive approval (for example, Michigan charges annual fees of \$10,000; Oregon charges biennial fees of \$7,000 and requires a separate surety bond).

There are many out-of-state IHEs that currently enroll New York State residents in credit-bearing postsecondary distance education programs. In order not to disadvantage New York State residents who are currently enrolled in these programs, the proposed regulation includes the following:

**Grace Period**

The proposed regulation includes a six-month grace period from the effective date of the regulation for an out-of-state IHE to actively work toward obtaining Department approval. During the grace period, an IHE may continue to operate its distance education programs to students that are currently enrolled in its programs. However, if the IHE does not obtain approval during this grace period, the institution will be prohibited from enrolling additional New York State residents until such time as approval is granted.

**Phase-out Period**

Should an out-of-state IHE currently enrolling New York State residents chose not to apply for approval, or be disapproved by the Department for offering credit-bearing postsecondary distance education to New York residents, the IHEs will be prohibited from enrolling new students from New York State and the IHE will only be allowed to offer its distance education programs to New York State residents who are currently enrolled in its programs for the purposes of course or degree completion and phasing out of its operation in New York State.

**3. PROFESSIONAL SERVICES:**

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

**4. COMPLIANCE COSTS:**

Subpart 49-1 contains the fee schedule that applies to all New York State IHEs seeking approval to operate under SARA, including those that are small businesses with less than 100 employees, based on the institutions total full-time equivalent (FTE) enrollment as follows:

| Institution’s total full-time equivalent (FTE) enrollment as shown in the Federal Integrated Postsecondary Education Data System (IPEDS) | Total Annual Fee |
|--|------------------|
| Under 2,500 FTE enrollment   | \$5,000          |
| 2,500 – 9,999 FTE enrollment   | \$7,000          |
| 10,000 or more FTE enrollment  | \$9,000          |

Subpart 49-2 contains the fee schedule that applies to out-of-state institutions, including small businesses with less than 100 employees, seeking approval from the Department to offer distance education to New York state residents as follows:

| Application Review Fees | Annual Approval Fee | Total Annual Fee |
|-------------------------|---------------------|------------------|
| \$7,000                 | \$10,000            | \$17,000         |

**5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

The rule does not impose any additional technological requirements on either New York State IHEs or out-of-state IHEs, including small businesses.

**6. MINIMIZING ADVERSE IMPACT:**

The rule seeks to address the needs of small businesses in New York by making the fees dependent on full-time enrollment in the school.

**7. PARTICIPATION OF SMALL BUSINESSES:**

The Department has solicited comment on the proposed amendment from institutions of higher education in New York State that are small businesses with less than 100 employees.

**(b) Local governments:**

The purpose of the proposed addition of new Subparts 49-1 and 49-2 (together, Part 49) of the Commissioner’s Regulations is to implement Chapter 220 of the Laws of 2015 and authorize the Department to establish policies and procedures to approve New York State higher education institutions to participate in State Authorization Reciprocity Agreement (SARA) and to approve out-of-state institutions, who do not participate in SARA, to provide distance education to New York State residents. Because it is evident from the nature of the rule that it does not affect local government; no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one has not been prepared.

**Rural Area Flexibility Analysis**

**1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

The purpose of the proposed amendment is to implement Chapter 220 of the Laws of 2015 and establish the requirements for authorization of New York State higher education institutions to participate in State Authorization Reciprocity Agreement (SARA) and the requirements for the approval of out-of-State institutions, who do not participate in SARA to provide distance education to New York residents.

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

Providing State oversight for interstate postsecondary distance education has proved challenging, due to the patchwork of different regulations across individual states, and limited individual State capacity to monitor these activities. For example, many states require detailed approval and review processes and annual fees amounting to tens of thousands of dollars or more for New York State IHEs seeking to offer distance education to their residents. New York State, on the other hand, has not previously required out-of-state institutions of higher education to be approved to offer distance education to New York State residents. Thus, while it is currently costly and cumbersome for New York State’s IHEs to offer distance education in other states, it is disproportionately easy for out-of-state IHEs to offer distance education to New York State residents without any initial screening or quality assurance approvals required.

Through participation in SARA, New York State is advancing a multi-layered approach to quality assurance and consumer protection in New York State. SARA sets minimum quality standards for the provision of postsecondary distance education where there were previously no requirements. In addition, under SARA, the Department will have new staff capacity specifically dedicated to the quality review and complaint management processes for interstate postsecondary distance education. In collaboration with the four higher education sectors, and to complement the Department’s efforts, New York State will benefit from a national network of support from other SARA state portal agencies responsible for the same.

Proposed Amendment:

New York State IHEs and SARA – Proposed Subpart 49-1

By joining SARA, the Department will be setting minimum initial quality and accountability standards, as agreed to through the SARA policies and standards, for New York State IHEs to offer credit-bearing postsecondary distance education in other SARA states. Under the terms of SARA, out-of-state IHEs participating in SARA will be held to the same initial quality and accountability standards in order to receive approval to offer distance education to New York State residents.

When the Department, on behalf of the State, joins SARA, it will begin accepting applications from New York State IHEs for voluntary participation in SARA. Subpart 49-1 of the proposed regulations provides for procedures and fees for New York State IHEs to participate in SARA and set for the eligibility requirements for institutions seeking to participate in SARA, consistent with § 210-c of the Education Law and the national policies and standards of SARA.

Once New York State institutions apply and are approved by the Department for participation in SARA, they will be authorized to offer their registered distance education programs in all other states that are participating in SARA without any additional costs in any of the other states in which they wish to operate. There are currently 36 states participating in SARA and several others are considering joining and/or pursuing the necessary state legislation to do so.

Once the Department joins SARA, it will be responsible for managing a complaint process for complaints received against New York State IHEs offering distance education under the SARA agreement. Other states that participate in SARA have established comparable State processes for managing complaints for IHEs from other states that participate in SARA which will provide the Department with a national network of support for quality assurance and complaint management across SARA states.

The fee structure presented in the draft regulations reflects the costs required by the Department to carry out the administrative and oversight work of SARA on behalf of New York State IHEs and the costs to maintain State-level membership which is required for the State to participate in SARA. This fee structure is reasonable in relation to the type and nature of the work required of the Department to carry out required SARA activities, including a robust complaint management process. Since there are currently 36 states participating in SARA, this annual Department fee will be significantly lower than the costs for New York State IHEs to seek individual state approval to offer their distance education program outside of New York State.

Approval of Distance Education for Non-SARA IHEs – Proposed Subpart 49-2

While SARA sets minimum initial quality and accountability standards for offering interstate credit-bearing postsecondary distance education, there remain a few states that are not in SARA. In addition, there may be a number of IHEs in SARA states that have elected not to join SARA. For those IHEs that are not in SARA and that seek approval to offer distance education to New York State residents, the Department would be responsible for initial screening and ensuring that these non-SARA IHEs meet the same or comparable initial quality and accountability standards as IHEs approved to operate under SARA.

Subpart 49-2 of the proposed regulations provides for procedures and fees to enable out-of-state IHEs that are not in SARA to obtain approval to

offer credit-bearing distance education instruction, courses, or programs to New York State residents. The minimum eligibility and quality standards set forth in this Subpart are comparable to those expected for IHEs that participate in SARA. So, in other words, an out-of-state institution that does not meet the standards to participate in SARA would not meet the standards established in this section and would not be approved to offer distance education to New York residents.

The fee structure presented in this Subpart of the proposed regulations reflects the costs required by the Department to carry out the initial and quality review of out-of-state applicants, the costs to maintain a basic level of oversight and data collection, and the costs associated with renewal reviews. This fee structure is reasonable in relation to the type and nature of the work required of the Department, and is comparable to those currently charged by other states for New York State IHEs to receive approval (for example, Michigan charges annual fees of \$10,000; Oregon charges biennial fees of \$7,000 and requires a separate surety bond).

There are many out-of-state IHEs that currently enroll New York State residents in credit-bearing postsecondary distance education programs. In order not to disadvantage New York State residents who are currently enrolled in these programs, the proposed regulation includes the following:

Grace Period

The proposed regulation includes a six-month grace period from the effective date of the regulation for an out-of-state IHE to actively work toward obtaining Department approval. During the grace period, an IHE may continue to operate its distance education programs to students that are currently enrolled in its programs. However, if the IHE does not obtain approval during this grace period, the institution will be prohibited from enrolling additional New York State residents until such time as approval is granted.

Phase-out Period

Should an out-of-state IHE currently enrolling New York State residents chose not to apply for approval, or be disapproved by the Department for offering credit-bearing postsecondary distance education to New York residents, the IHEs will be prohibited from enrolling new students from New York State and the IHE will only be allowed to offer its distance education programs to New York State residents who are currently enrolled in its programs for the purposes of course or degree completion and phasing out of its operation in New York State.

3. COSTS:

Subpart 49-1 contains the fee schedule that applies to New York State IHEs seeking approval to operate under SARA, based on the institutions total full-time equivalent (FTE) enrollment as follows, including for IHEs in rural areas of this State:

| Institution’s total full-time equivalent (FTE) enrollment as shown in the Federal Integrated Postsecondary Education Data System (IPEDS) | Total Annual Fee |
|--|------------------|
| Under 2,500 FTE enrollment   | \$5,000          |
| 2,500 – 9,999 FTE enrollment   | \$7,000          |
| 10,000 or more FTE enrollment  | \$9,000          |

Subpart 49-2 contains the fee schedule that applies to out-of-state institutions seeking approval from the Department to offer distance education to New York state residents as follows:

| Application Review Fees | Annual Approval Fee | Total Annual Fee |
|-------------------------|---------------------|------------------|
| \$7,000                 | \$10,000            | \$17,000         |

These fee schedules apply equally to all New York State IHEs and out-of-state institutions that voluntarily choose to participate, including those located in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The rule seeks to address the issue of the current challenges of offering postsecondary distance education—including the “patchwork” of different regulations. It is currently costly and cumbersome for New York IHEs to offer distance education in other states, and it is disproportionately easy for out-of-state IHEs to offer distance education to New York State residents without any initial screening or quality assurance approvals required.

The new regulations apply equally to all IHEs throughout the State as well as out-of-state IHEs that choose to participate in SARA or offer distance education programs in New York State. This regulation accommodates those IHEs in rural areas of the State because it centralizes the costs of obtaining interstate authorization. Additionally, the costs for New York IHEs seeking to participate in SARA are relative to the institution’s full-time enrollment. Therefore, the Department has tried to accommodate further accommodating those IHE’s in rural areas of the State.

## 5. RURAL AREA PARTICIPATION:

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

**Job Impact Statement**

The proposed addition of new Subparts 49-1 and 49-2 (together, Part 49) of the Commissioner's Regulations implements Chapter 220 of the Laws of 2015 and authorizes the Department to establish policies and procedures to approve New York State higher education institutions to participate in State Authorization Reciprocity Agreement (SARA) and to approve out-of-state institutions, who do not participate in SARA, to provide distance education to New York State residents. Because the proposed amendment does not impact jobs in New York State, a detailed job analysis is not necessary. Accordingly, a job impact statement is not required and one has not been prepared.

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

**Academic Intervention Services**

I.D. No. EDU-18-16-00005-P

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

**Proposed Action:** Amendment of section 100.2(ee) of Title 8 NYCRR.

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

**Subject:** Academic Intervention Services.

**Purpose:** The proposed rule revises the methodology by which school districts shall identify students in grades 3 – 8 who receive academic intervention services (AIS) for the 2016-2017 school year, and then for the 2017-2018 school year and each school year thereafter.

**Text of proposed rule:** Paragraph (2) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 27, 2016, as follows:

(2) Requirements for providing academic intervention services in grade three to grade eight. [Schools shall provide academic intervention services when students:

(i) score below:

(a) the State designated performance level on one or more of the State elementary assessments in English language arts, mathematics or science, provided that for the 2015-2016 school year only, the following shall apply:

(1) those students scoring below a scale score specified in subclause (3) of this clause shall receive academic intervention instructional services; and

(2) those students scoring at or above a scale score specified in subclause (3) of this clause but below level 3/proficient shall not be required to receive academic intervention instructional and/or student support services unless the school district, in its discretion, deems it necessary. Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2015-2016 school year to students who scored above a scale score specified in subclause (3) of this clause but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2014-2015, and shall no later than November 1, 2015 either post to its website or distribute to parents in writing a description of such process;

(3) the following scale scores shall be used to determine which students shall receive academic intervention services as specified in subclauses (1) and (2) of this clause:

Grade 3 English language arts, a scale score of 299;  
Grade 4 English language arts, a scale score of 296;  
Grade 5 English language arts, a scale score of 297;  
Grade 6 English language arts, a scale score of 297;  
Grade 7 English language arts, a scale score of 301;  
Grade 8 English language arts, a scale score of 302;  
Grade 3 mathematics, a scale score of 293;  
Grade 4 mathematics, a scale score of 284;  
Grade 5 mathematics, a scale score of 289;  
Grade 6 mathematics, a scale score of 289;  
Grade 7 mathematics, a scale score of 290;  
Grade 8 mathematics, a scale score of 293; and/or

(b) the State designated performance level on a State elementary assessment in social studies administered prior to the 2010-2011 school year; provided that beginning in the 2010-2011 school year, at which time a State elementary assessment in social studies shall no longer be

administered, a school shall provide academic intervention services when students are determined to be at risk of not achieving State learning standards in social studies pursuant to subparagraph (iii) of this paragraph;

(ii) are limited English proficient (LEP) and are determined, through a district-developed or district-adopted procedure uniformly applied to LEP students, to be at risk of not achieving State learning standards in English language arts, mathematics, social studies and/or science, through English or the student's native language. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible disability pursuant to Part 117 of this Title; or

(iii) are determined, through a district-developed or district-adopted procedure uniformly applied, to be at risk of not achieving State standards in English language arts, mathematics, social studies and/or science. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible limited English proficiency or possible disability pursuant to Part 117 of this Title.]

(i) For the 2016-17 school year, schools shall provide academic intervention services following a two-step identification process:

(a) First, students who score below a median scale score between a level 2/partially proficient and a level 3/proficient on a grade 3-8 English language arts or mathematics State assessment as determined by the Commissioner, shall be considered for academic intervention services. Students scoring at or above the median scale score determined by the Commissioner but below a level 3/proficient score shall not be required to receive academic intervention services unless the school district, in its discretion, determines that such services are needed.

(b) Districts shall then use a district-developed procedure, to be applied uniformly at each grade level, for determining which students identified in clause (a) shall receive academic intervention services after it considers a student's scores on multiple measures of student performance, which may include, but need not be limited to, one or more of the following measures, as determined by the district:

(1) developmental reading assessments for grades kindergarten through grade 6;

(2) New York State English as a Second Language Achievement Test (NYSESLAT);

(3) benchmark and lesson-embedded assessments for reading and mathematics in grades kindergarten through grade 6 based on teacher designed and selected assessments;

(4) common formative assessments that provide information about students' skills;

(5) unit and lesson assessments for English language arts, mathematics, science, social studies and languages other than English for grades 7 through 8; and/or

(6) results of psychoeducational evaluations based on a variety of assessments and inventories.

(c) Each school district shall develop and maintain its policies for providing academic intervention services during the 2016-2017 school year no later than September 1, 2016 and shall either post its policies to its website or distribute to parents in writing a description of such process, including a description of which student performance measures and scores on such measures will be utilized to determine eligibility for academic intervention services.

(d) Schools shall also provide academic intervention services to students who are limited English proficient (LEP) and are determined, through a district-developed or district-adopted procedure uniformly applied to LEP students, to be at risk of not achieving State learning standards in English language arts, mathematics, social studies and/or science, through English or the student's native language. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible disability pursuant to Part 117 of this Title.

(e) Schools shall also provide academic intervention services to students who are determined, through a district-developed or district-adopted procedure uniformly applied, to be at risk of not achieving State standards in English language arts, mathematics, social studies and/or science. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible limited English proficiency or possible disability pursuant to Part 117 of this Title.

(ii) Commencing with the 2017-18 school year and each school year thereafter, schools shall provide academic intervention services following a two-step identification process:

(a) First, all students performing at or below a certain scale score, established through a standard setting process conducted by the Department, on one or more of the State elementary assessments in English language arts or mathematics shall be considered for academic intervention services. The standard setting process shall include a panel

of educators, including teachers, principals and other school personnel. Students scoring at or above the scale score established by the standard setting panel and approved by the Commissioner shall not be required to receive academic intervention services unless the school district, in its discretion, determines that such services are needed.

(b) Districts shall then use a district-developed procedure, to be applied uniformly at each grade level, for determining which students identified in clause (a) shall receive academic intervention services after it considers a student's scores on multiple measures of student performance, which may include but need not be limited to one or more of the following measures, as determined by the district:

(1) developmental reading assessments for grades kindergarten through grade 6;

(2) New York State English as a Second Language Achievement Test (NYSESLAT);

(3) benchmark and lesson-embedded assessments for reading and mathematics in grades kindergarten through grade 6 based on teacher designed and selected assessments;

(4) common formative assessments that provide information about students' skills;

(5) unit and lesson assessments for ELA, mathematics, science, social studies and languages other than English for grades 7 through 8; and/or

(6) results of psychoeducational evaluations based on a variety of assessments and inventories.

(c) Each school district shall develop and maintain its policies for providing academic services during the 2017-2018 school year and each school year thereafter no later than September 1, 2017 and each September thereafter and shall either post its policies to its website or distribute to parents in writing a description of such process, including a description of which student performance measures and scores on such measures will be utilized to determine eligibility for academic intervention services.

(d) Schools shall also provide academic intervention services to students who are limited English proficient (LEP) and are determined, through a district-developed or district-adopted procedure uniformly applied to LEP students, to be at risk of not achieving State learning standards in English language arts, mathematics, social studies and/or science, through English or the student's native language. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible disability pursuant to Part 117 of this Title; or

(e) Schools shall also provide academic intervention services to students who are determined, through a district-developed or district-adopted procedure uniformly applied, to be at risk of not achieving State standards in English language arts, mathematics, social studies and/or science. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible limited English proficiency or possible disability pursuant to Part 117 of this Title.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kirti Goswami, New York State Education Department, Room 148, 89 Washington Avenue, Albany, New York 12047, (618) 474-8966, email: legal@nysed.gov

**Data, views or arguments may be submitted to:** Peg Rivers, New York State Education Department, Room 979, 89 Washington Avenue, Albany, New York 12047, (518) 408-1118, email: regcomments@nysed.gov

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

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY:

Education Law (Ed.L.) § 101 charges SED with the general management and supervision of public schools and the educational work of the State.

Ed.L. § 207 empowers the Regents and the Commissioner to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on SED by law.

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

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

Ed.L. § 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of education.

Ed.L. § 3204(3) set forth the programs of study in the public schools.

##### 2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to establish the methodology by which school districts shall identify students in grades 3 – 8 eligible for academic intervention services for the 2016-2017 school year, and then for the 2017-2018 school year and each school year thereafter.

##### 3. NEEDS AND BENEFITS:

Commissioner's regulation § 100.2(ee) requires school districts to provide AIS to students scoring below the State designated performance level on the grades 3-8 State assessments for ELA and mathematics and/or at risk of not achieving the State learning standards. The requirement to provide AIS has existed for more than 20 years.

The State assessments for grades 3-8 in ELA and mathematics have four designated performance levels:

Level 1: Students performing at this level are well below proficient in standards for their grade.

Level 2: Students performing at this level are partially proficient in standards for their grade.

Level 3: Students performing at this level are proficient in standards for their grade.

Level 4: Students performing at this level excel in standards for their grade.

Previously, all students who scored at Levels 1 and/or 2 on the grades 3-8 ELA or mathematics assessments were eligible to receive AIS. In 2013, SED for the first time, administered assessments in grades 3-8 that were based on the NYS P-12 Common Core Learning Standards (CCLS), a set of standards that articulate the knowledge and skills students need to be college and career ready.

In September 2013, the Regents adopted amendments to § 100.2(ee) that provided flexibility to districts in the provision of AIS for the 2013-14 school year, in recognition of the fact that the new State assessments were the first administered to New York students that measured the progress of students in meeting the expectations of the CCLS.

In the 2013-14 school year § 100.2(ee) required districts to establish a policy to determine what services, if any, to provide to students who scored at or above the transitional cut scores established by SED, but below proficiency levels on the 2013 assessments. Specifically, for the 2013-14 school year § 100.2(ee) required:

- Students who scored below the specified cut scores for Grades 3-8 ELA and mathematics must receive AIS;

- Students who scored at or above the specified cut scores, but below the 2013 Level 3/proficient cut scores, would not be required to receive AIS and/or student support services unless the school district deemed it necessary;

- Each school district was required to develop and maintain on file a uniform process by which the district determined whether to offer AIS to students who scored at or above the specified cut scores but below Level 3/proficient on grades 3-8 ELA or mathematics assessments; and

- By November 1, 2013, each school was required to either post a description of this process to its website or distribute a written description of such process to parents.

For the 2014-15 and 2015-16 school years, the Regents acted to extend these provisions to continue flexibility in providing AIS. However, in September 2015, the Board also directed SED to establish a committee to examine the effectiveness of AIS and to make recommendations to the Board relating to the eligibility requirements for the 2016-17 school year. At its February 2016 Board meeting, SED presented several options for amending Commissioner's Regulations and shared feedback received from key stakeholders. In addition, the Board heard presentations from two school districts (Liverpool Central School District and the NYC Department of Education) on strategies used to implement AIS as well as resources used and challenges that districts face in implementing AIS.

##### Feedback from Stakeholders

During the 2015-16 school year, SED hosted several meetings and conference calls attended by the New York State Council of School Superintendents, the School Administrators Association, Superintendents, Assistant Superintendents, AIS instructors, Curriculum Directors and teachers trained in the Response to Intervention (RTI) from 13 school districts<sup>1</sup>. Participants informed SED on AIS implementation, and how decisions are made regarding the types of AIS students receive. The four main areas of concern were:

- Identification services should not be based upon a single measure;

- Some districts voiced concern that the current process resulted in over identification of students;

- Many districts preferred an RTI approach but need additional resources and/or training to make this transition;

- Many districts questioned the utility of having to provide AIS in science or social studies or to certain students who may be better served by more classroom embedded supports, i.e.ELL in ELA, students with severe disabilities, students who need as many periods as possible to be dedicated to credit-bearing high school courses in order to graduate.

Many stakeholders assert that the determination of whether a student would benefit from AIS should be based on multiple measures rather than on the results of a single State assessment. This is consistent with Recommendation #19 of the Governor's Common Core Task Force Report ("Prevent students from being mandated into Academic Intervention Services based on a single test." December 2015). Given the Task Force's recommendation and the feedback received by SED on the importance of multiple measures in decision-making processes, SED asked stakeholders to share recommendations on how to incorporate multiple measures into the AIS identification process.

#### Recommendations to Revise the Methodology

SED recommends that the Board amend § 100.2(ee) for the identification of students eligible for AIS in grades 3 – 8 ELA and mathematics:

For 2016-17, districts shall identify students through a two-step process:

- First, all students performing at or below a median cut point score between a level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner, shall be considered for AIS.

- Upon identification of a student for consideration for AIS, Districts shall then use a district-developed procedure, to be applied uniformly at each grade level, for determining which students shall receive AIS after the district considers a student's scores on multiple measures of student performance, which may include but not be limited to the following measures, as determined by the district:

- o developmental reading assessments for K-6;

- o NYSESLAT;

- o benchmark and lesson-embedded assessments for reading and math in K-6 based on teacher designed and selected assessments;

- o common formative assessments that provide information about students' skills;

- o unit and lesson assessments for ELA, mathematics, science, social studies and LOTE for grades 7-12;

- o results of psychoeducational evaluations based on a variety of assessments and inventories.

Beginning with the 2017-18 school year, districts shall identify students for AIS through a two-step process:

- First, all students performing at or below a cut score established through the standard setting process shall be considered. The process shall be conducted by a panel of educators led by SED (to meet in the summer of 2016) to recommend the performance level for 3-8 ELA and mathematics assessments below which student's could be considered for AIS.

- Upon a student's identification for consideration for AIS, districts shall then use a district-developed procedure, to be applied uniformly at each grade level determining which students shall receive AIS after the district considers a student's scores on multiple measures of student performance, which may include but not be limited to the following measures, as determined by the district:

- o developmental reading assessments for K-6;

- o (NYSESLAT);

- o benchmark and lesson-embedded assessments for reading and math in K-6 based on teacher designed and selected assessments;

- o common formative assessments that provide information about students' skills;

- o unit and lesson assessments for ELA, mathematics, science, social studies and LOTE for grades 7-12;

- o results of psychoeducational evaluations based on a variety of assessments and inventories.

As is currently the case, districts have the flexibility to determine that a student who scores above the cut score for eligibility for AIS should receive this service. As is also currently the case, districts must by September 1 each year develop and maintain their policies for providing AIS and either post the district's policies to its website or distribute to parents in writing a description of such process, including a description of which student performance measures and scores on such measures will be utilized to determine eligibility for academic intervention services.

#### 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.

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments but merely revises the currently methodology by which school districts shall identify students in grades 3 – 8 who receive AIS for the 2016-2017 school year, and then for the 2017-2018 school year and each school year thereafter. The proposed amendment will not impose any additional compliance requirements but instead will allow for continued flexibility to school districts in identifying students eligible for AIS.

#### 6. PAPERWORK:

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

#### 7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal regulations.

#### 8. ALTERNATIVES:

In September 2015, the Board directed SED to establish a committee to examine the effectiveness of AIS and to make recommendations for amendments. At the February 2016 meeting, NYSED presented to the Board several alternatives for amendments which included:

1. All students performing below Level 3 in 3-8 ELA/mathematics will receive AIS, returning to the pre-NYS P-12 CCLS approach.

2. All students scoring below the current regulatory cut points will be required to receive AIS (this standard sunsets at the end of the 2015-16 school year).

3. All students scoring below a cut point created so that the same percentage of students statewide are receiving AIS as previously received AIS prior NYS P-12 CCLS.

4. All students performing below a "mid-Level 2" cut point.

5. SED conducts a Standard Setting process in which a group of teachers recommends a cut score based upon a "book-marking process." This proposed amendment combines four and five and responds to concern from the field about identification for AIS based on a single measure.

#### 9. FEDERAL STANDARDS:

There are no related federal standards.

#### 10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted at July Regents meeting and will become effective on July 27, 2016 and the eligibility requirements for AIS services will begin to apply in the 2016-2017 school year. It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

<sup>1</sup> Participating school Districts included: New York City Department of Education, Buffalo City School District, Syracuse City School District, Yonkers City School District, Rochester City School District, Corinth Central School District, Schalmont Central School District, Penfield Central School District, Chenango Forks Central School District, Elmira Central School District, Liverpool Central School District, Wappinger Falls Central School District, and Arlington Central School District.

#### Regulatory Flexibility Analysis

##### (a) Small Businesses:

The proposed amendment revises the currently methodology by which school districts shall identify students in grades 3 – 8 who receive AIS for the 2016-2017 school year, and then for the 2017-2018 school year and each school year thereafter. The proposed amendment will not impose any additional compliance requirements but instead will allow for continued flexibility to school districts in identifying students eligible for AIS. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

##### (b) Local Government:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments but merely revises the currently methodology by which school districts shall identify students in grades 3 – 8 who receive AIS for the 2016-2017 school year, and then for the 2017-2018 school year and each school year thereafter. The proposed amendment will not impose any additional compliance requirements but instead will allow for continued flexibility to school districts in identifying students eligible for AIS.

#### 1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 public school districts in the State.

#### 2. COMPLIANCE REQUIREMENTS:

Commissioner's regulation § 100.2(ee) requires school districts to provide AIS to students scoring below the State designated performance level on the grades 3-8 State assessments for ELA and mathematics and/or at risk of not achieving the State learning standards. The requirement to provide AIS has existed for more than 20 years.

The State assessments for grades 3-8 in ELA and mathematics have four designated performance levels:

Level 1: Students performing at this level are well below proficient in standards for their grade.

Level 2: Students performing at this level are partially proficient in standards for their grade.

Level 3: Students performing at this level are proficient in standards for their grade.

Level 4: Students performing at this level excel in standards for their grade.

Previously, all students who scored at Levels 1 and/or 2 on the grades 3-8 ELA or mathematics assessments were eligible to receive AIS. In 2013, SED for the first time, administered assessments in grades 3-8 that were based on the NYS P-12 Common Core Learning Standards (CCLS), a set of standards that articulate the knowledge and skills students need to be college and career ready.

In September 2013, the Regents adopted amendments to § 100.2(ee) that provided flexibility to districts in the provision of AIS for the 2013-14 school year, in recognition of the fact that the new State assessments were the first administered to New York students that measured the progress of students in meeting the expectations of the CCLS.

In the 2013-14 school year § 100.2(ee) required districts to establish a policy to determine what services, if any, to provide to students who scored at or above the transitional cut scores established by SED, but below proficiency levels on the 2013 assessments. Specifically, for the 2013-14 school year § 100.2(ee) required:

- Students who scored below the specified cut scores for Grades 3-8 ELA and mathematics must receive AIS;
- Students who scored at or above the specified cut scores, but below the 2013 Level 3/proficient cut scores, would not be required to receive AIS and/or student support services unless the school district deemed it necessary;
- Each school district was required to develop and maintain on file a uniform process by which the district determined whether to offer AIS to students who scored at or above the specified cut scores but below Level 3/proficient on grades 3-8 ELA or mathematics assessments; and
- By November 1, 2013, each school was required to either post a description of this process to its website or distribute a written description of such process to parents.

For the 2014-15 and 2015-16 school years, the Regents acted to extend these provisions to continue flexibility in providing AIS. However, in September 2015, the Board also directed SED to establish a committee to examine the effectiveness of AIS and to make recommendations to the Board relating to the eligibility requirements for the 2016-17 school year. At its February 2016 Board meeting, SED presented several options for amending Commissioner's Regulations and shared feedback received from key stakeholders. In addition, the Board heard presentations from two school districts (Liverpool Central School District and the NYC Department of Education) on strategies used to implement AIS as well as resources used and challenges that districts face in implementing AIS.

**Feedback from Stakeholders**

During the 2015-16 school year, SED hosted several meetings and conference calls attended by the New York State Council of School Superintendents, the School Administrators Association, Superintendents, Assistant Superintendents, AIS instructors, Curriculum Directors and teachers trained in the Response to Intervention (RTI) from 13 school districts<sup>1</sup>. Participants informed SED on AIS implementation, and how decisions are made regarding the types of AIS students receive. The four main areas of concern were:

- Identification services should not be based upon a single measure;
- Some districts voiced concern that the current process resulted in over identification of students;
- Many districts preferred an RTI approach but need additional resources and/or training to make this transition;
- Many districts questioned the utility of having to provide AIS in science or social studies or to certain students who may be better served by more classroom embedded supports, i.e.ELL in ELA, students with severe disabilities, students who need as many periods as possible to be dedicated to credit-bearing high school courses in order to graduate.

Many stakeholders assert that the determination of whether a student would benefit from AIS should be based on multiple measures rather than on the results of a single State assessment. This is consistent with Recommendation #19 of the Governor's Common Core Task Force Report ("Prevent students from being mandated into Academic Intervention Services based on a single test." December 2015). Given the Task Force's recommendation and the feedback received by SED on the importance of multiple measures in decision-making processes, SED asked stakeholders to share recommendations on how to incorporate multiple measures into the AIS identification process.

**Recommendations to Revise the Methodology**

SED recommends that the Board amend § 100.2(ee) for the identification of students eligible for AIS in grades 3 – 8 ELA and mathematics:

For 2016-17, districts shall identify students through a two-step process:

- First, all students performing at or below a median cut point score between a level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner, shall be considered for AIS.
- Upon identification of a student for consideration for AIS, Districts shall then use a district-developed procedure, to be applied uniformly at

each grade level, for determining which students shall receive AIS after the district considers a student's scores on multiple measures of student performance, which may include but not be limited to the following measures, as determined by the district:

- o developmental reading assessments for K-6;
- o NYSESLAT;
- o benchmark and lesson-embedded assessments for reading and math in K-6 based on teacher designed and selected assessments;
- o common formative assessments that provide information about students' skills;
- o unit and lesson assessments for ELA, mathematics, science, social studies and LOTE for grades 7-12;
- o results of psychoeducational evaluations based on a variety of assessments and inventories.

Beginning with the 2017-18 school year, districts shall identify students for AIS through a two-step process:

- First, all students performing at or below a cut score established through the standard setting process shall be considered. The process shall be conducted by a panel of educators led by SED (to meet in the summer of 2016) to recommend the performance level for 3-8 ELA and mathematics assessments below which student's could be considered for AIS.
- Upon a student's identification for consideration for AIS, districts shall then use a district-developed procedure, to be applied uniformly at each grade level determining which students shall receive AIS after the district considers a student's scores on multiple measures of student performance, which may include but not be limited to the following measures, as determined by the district:
  - o developmental reading assessments for K-6;
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  - o unit and lesson assessments for ELA, mathematics, science, social studies and LOTE for grades 7-12;
  - o results of psychoeducational evaluations based on a variety of assessments and inventories.

As is currently the case, districts have the flexibility to determine that a student who scores above the cut score for eligibility for AIS should receive this service. As is also currently the case, districts must by September 1 each year develop and maintain their policies for providing AIS and either post the district's policies to its website or distribute to parents in writing a description of such process, including a description of which student performance measures and scores on such measures will be utilized to determine eligibility for academic intervention services.

**3. PROFESSIONAL SERVICES:**

The proposed amendment imposes no additional professional service requirements on school districts.

**4. COMPLIANCE COSTS:**

The proposed amendment will not impose any additional costs but merely revises the currently methodology by which school districts shall identify students in grades 3 – 8 who receive AIS for the 2016-2017 school year, and then for the 2017-2018 school year and each school year thereafter. The proposed amendment will not impose any additional compliance costs but instead will allow for continued flexibility to school districts in identifying students eligible for AIS.

**5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

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

**6. MINIMIZING ADVERSE IMPACT:**

The proposed amendment is necessary to implement Regents policy to provide academic intervention services to students in need of such supports, as identified by multiple measures of student performance. This amended identification methodology will provide flexibility to school districts in determining which measures of academic performance are valuable indicators of student need for academic intervention services while at the same time ensure that students who will be best served by academic intervention services will be eligible to receive such services.

**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. The amendments were also generated from suggestions received during meetings and conference calls held during the 2015-16 school year from the New York State Council of School Superintendents, the School Administrators Association, Superintendents, Assistant Superintendents, AIS instructors, Curriculum Directors and teachers trained in the Response to Intervention (RTI) from 13 school districts. Participating school Districts included: New York City Department of Education, Buffalo City School District, Syracuse City School District,

Yonkers City School District, Rochester City School District, Corinth Central School District, Schalmont Central School District, Penfield Central School District, Chenango Forks Central School District, Elmira Central School District, Liverpool Central School District, Wappinger Falls Central School District, and Arlington Central School District.

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#### **Rural Area Flexibility Analysis**

##### **1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

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

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

Commissioner's regulation § 100.2(ee) requires school districts to provide AIS to students scoring below the State designated performance level on the grades 3–8 State assessments for ELA and mathematics and/or at risk of not achieving the State learning standards. The requirement to provide AIS has existed for more than 20 years.

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#### **Feedback from Stakeholders**

During the 2015-16 school year, SED hosted several meetings and conference calls attended by the New York State Council of School

Superintendents, the School Administrators Association, Superintendents, Assistant Superintendents, AIS instructors, Curriculum Directors and teachers trained in the Response to Intervention (RTI) from 13 school districts<sup>1</sup>. Participants informed SED on AIS implementation, and how decisions are made regarding the types of AIS students receive. The four main areas of concern were:

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SED recommends that the Board amend § 100.2(ee) for the identification of students eligible for AIS in grades 3 – 8 ELA and mathematics:

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Beginning with the 2017-18 school year, districts shall identify students for AIS through a two-step process:

- First, all students performing at or below a cut score established through the standard setting process shall be considered. The process shall be conducted by a panel of educators led by SED (to meet in the summer of 2016) to recommend the performance level for 3-8 ELA and mathematics assessments below which student's could be considered for AIS.

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3. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs but merely revises the currently methodology by which school districts shall identify students in grades 3 – 8 who receive AIS for the 2016-2017 school year, and then for the 2017-2018 school year and each school year thereafter.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs and is necessary to implement Regents policy to revise the currently methodology by which school districts shall identify students in grades 3 – 8 who receive AIS for the 2016-2017 school year, and then for the 2017-2018 school year and each school year thereafter. The proposed amendment will not impose any additional compliance requirements but instead will allow for continued flexibility to school districts in identifying students eligible for AIS.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department’s Rural Advisory Committee, whose membership includes school districts located in rural areas. The amendments were also generated from suggestions received during meetings and conference calls held during the 2015-16 school year from the New York State Council of School Superintendents, the School Administrators Association, Superintendents, Assistant Superintendents, AIS instructors, Curriculum Directors and teachers trained in the Response to Intervention (RTI) from 13 school districts. Among the school districts represented included rural school districts including: Participating rural school Districts included: Corinth Central School District and Chenango Forks Central School District,

<sup>1</sup> Participating school Districts included: New York City Department of Education, Buffalo City School District, Syracuse City School District, Yonkers City School District, Rochester City School District, Corinth Central School District, Schalmont Central School District, Penfield Central School District, Chenango Forks Central School District, Elmira Central School District, Liverpool Central School District, Wappinger Falls Central School District, and Arlington Central School District.

**Job Impact Statement**

The proposed amendment relates to the methodology by which school district shall identify students in grades 3 through 8 who receive Academic Intervention Services (AIS). The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

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

**Substitute Teachers**

**I.D. No.** EDU-18-16-00006-P

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

**Proposed Action:** Amendment of section 80-5.4 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 305(1), 3001, 3004(1) and 3009

**Subject:** Substitute Teachers.

**Purpose:** The purpose of the proposed amendment is to address the issue of school districts having difficulty finding certified teachers to serve as substitute teachers in their districts by allowing districts and BOCES to employ an individual without a valid teaching certificate (and who is not pursuing certification) as a substitute teacher beyond the current 40 day limit, for up to an additional 50 days (90 days total) in limited circumstances where the district superintendent or the superintendent certifies that the district or BOCES has conducted a good faith recruitment search and there are no available certified teachers that can perform the duties of the position.

**Text of proposed rule:** Section 80-5.4 of the Regulations of the Commissioner of Education is amended, effective July 27, 2016 to read as follows:

§ 80-5.4 Substitute teachers.

(a) Definitions.

As used in this section:

(1) Substitute teacher means one who is employed in place of a regularly appointed teacher who is absent but is expected to return.

(2) Long-term basis means employment for more than 40 days by a school district or board of cooperative educational services in a school year.

(3) Itinerant basis means employment for 40 days or less by a school district or board of cooperative educational services in a school year.

(b) Responsibility.

The responsibility for the employment of appropriately qualified substitutes rests with the chief school officer. Persons employed on a long-term basis shall have the proper certification for the position, except as provided in [paragraph] paragraphs (c)(2) and (3) of this section.

(c) Length of employment.

There shall be three categories of substitutes as follows:

(1) Substitutes with valid teaching certificates or certificates of qualification. Service may be rendered in any capacity, for any number of days. If employed on more than an itinerant basis, such persons will be employed in an area for which they are certified.

(2) Substitutes without a valid certificate, but who are completing collegiate study toward certification at the rate of not less than six semester hours per year. Service may be rendered in any capacity, for any number of days, in any number of school districts. If employed on more than an itinerant basis, such persons will be employed in the area for which they are seeking certification.

(3) Substitutes without a valid certificate and who are not working towards certification. Service may be rendered for no more than 40 days by a school district or board of cooperative education services in a school year. *Provided, however, that in extreme circumstances where there is an urgent need for a substitute teacher and the district has undertaken a good faith recruitment search for a properly certified candidate, and determined that there are no available certified teachers to perform the duties of such position, a substitute teacher, without a valid teaching certificate and who is not working towards certification, may be employed by the school district or board of cooperative educational services beyond the 40-day limit, for up to an additional 50 days (90 days total in a school year), if the district superintendent (for districts that are a component district of a board of cooperative educational services and boards of cooperative educational services) or the superintendent (for school districts that are not a component district of a board of cooperative educational services) certifies that the district or board of cooperative educational services, as applicable, has conducted a good faith recruitment search and there are no available certified teachers that can perform the duties of such position. In rare circumstances, a district or BOCES may hire a substitute teacher beyond the 90 days, if a district superintendent or superintendent attests that a good faith recruitment search has been conducted and that there are still no available certified teachers who can perform the duties of such position and that a particular substitute teacher is needed to work with a specific class or group of students until the end of the school year.*

(d) Reporting.

The chief school officer of each school district and the district superintendent of each board of cooperative educational services shall submit an annual report concerning the employment of all uncertified substitute teachers to the commissioner on forms prescribed by the commissioner, which shall include the number of substitute teachers authorized to be employed beyond the 40 day limit for the limited circumstances described in paragraph (c)(3) of this section, with the required certification(s) from the district superintendent or superintendent, as applicable, for each substitute teacher employed beyond the 40 day limit, certifying that a good faith recruitment search was conducted and that there were no available certified teachers that could perform the duties of such position. The annual report shall also include the number of substitute teachers authorized to be employed beyond the 90 days limit for the limited circumstances described in paragraph (c)(3) of this section, with the required certification(s) from the district superintendent or superintendents, as applicable, for each substitute teacher employed beyond the 90 day limit, certifying that a good faith recruitment search was conducted and that there were no available certified teachers that could perform the duties of such position and that a particular substitute teacher is needed to work with a specific class or group of students until the end of the school year.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kirti Goswami, New York State Education Department, Room 148, 89 Washington Avenue, Albany, New York 12047, (618) 474-8966, email: legal@nysed.gov

**Data, views or arguments may be submitted to:** Peg Rivers, New York State Education Department, Room 979, 89 Washington Avenue, Albany, New York 12047, (518) 408-1118, email: regcomments@nysed.gov

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

**Regulatory Impact Statement**

**1. STATUTORY AUTHORITY:**

Education Law 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 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 3001 establishes the qualifications of teachers in the classroom.

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

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 address the issue of school districts having difficulty finding certified teachers to serve as substitute teachers in their districts.

## 3. NEEDS AND BENEFITS:

Currently, school districts and BOCES may employ a substitute teacher to:

- individuals with a valid teaching certificate who can work for an unlimited number of days in any capacity unless employed more than on an itinerant basis in which case they must be employed in their certification area;
- individuals without a valid certificate, but who are working towards certification (taking college coursework) of a rate of not less than 6 semester hours per year. Service may be rendered in any capacity. If employed more than an itinerant basis, such employee must be employed in the area they are seeking certification; or
- individuals who are not certified or pursuing certification, however, these individuals are currently limited to work in a school district for 40 days during a school year.

### Proposed Amendment:

Based on feedback from the field, it appears that several school districts are having difficulty finding certified teachers to serve as substitute teachers in their districts. In many cases, the substitutes hired in category # 3 (above) have been recognized by the other teachers in their districts for their competency in the classroom and in covering the curriculum. However, upon reaching the 40 day limit, the district is currently forced to find a replacement substitute teacher who may not have the same expertise and familiarity with the classroom and curriculum as the former substitute teacher demonstrated.

In order to address this issue, the proposed amendment to 80-5.4 of the Regulations of the Commissioner of Education allows a district or board of cooperative educational services to employ an individual without a valid teaching certificate (and who is not pursuing certification) as a substitute teacher beyond the current 40 day limit, for up to an additional 50 days (90 days total) in limited circumstances where the district superintendent or the superintendent certifies that the district or BOCES has conducted a good faith recruitment search and there are no available certified teachers that can perform the duties of the position.

The amendment also includes a provision that will extend the reporting requirements in section 80-5.4 of the Regulations of the Commissioner to require school districts or BOCES to report the number of substitute teachers without valid certificates that were authorized to work over the 40 days in the limited circumstances described above and provide the required certifications.

## 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. In fact, it may result in a cost-savings to districts.

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, except that it extends the reporting requirements in section 80-5.4 of the Regulations of the Commissioner to require school districts or BOCES to report the number of substitute teachers without valid certificates that were authorized to work over the 40 days in the limited circumstances described above and provide the required certifications.

## 6. PAPERWORK:

The amendment requires a certification from the district superintendent

or superintendent that the district or BOCES conducted a good faith recruitment search and that there are no available certified teachers that can perform the duties of such position.

The amendment also includes a provision that will extend the reporting requirements in section 80-5.4 of the Regulations of the Commissioner to require school districts or BOCES to report the number of substitute teachers without valid certificates that were authorized to work over the 40 days in the limited circumstances described above, and to provide the required certifications to the Department.

## 7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

## 8. ALTERNATIVES:

There were many alternatives discussed with the field, including 120 days versus 90 days, however, ultimately the Department recommends a limit of 90 days to ensure a proper balance between ensuring qualified teachers are in the classroom and sufficient access to substitute teachers. The amendment applies equally to all districts and BOCES employing substitute teachers in New York State.

## 9. FEDERAL STANDARDS:

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

## 10. COMPLIANCE SCHEDULE:

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

### *Regulatory Flexibility Analysis*

#### (a) Small businesses:

The proposed amendment addresses the issue of school districts having difficulty finding certified teachers to serve as substitute teachers in their districts by allowing districts and BOCES to employ an individual without a valid teaching certificate (and who is not pursuing certification) as a substitute teacher beyond the current 40 day limit, for up to an additional 50 days (90 days total) in limited circumstances where the district superintendent or the superintendent certifies that the district or BOCES has conducted a good faith recruitment search and there are no available certified teachers that can perform the duties of the position. The proposed amendment also requires districts and BOCES to comply with the extended reporting requirements in section 80-5.4 of the Regulations of the Commissioner by reporting the number of substitute teachers without a valid certificate that were authorized to work over the 40 days in the limited circumstances described above, and to provide the required certifications to the Department. 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 July 2016 Board of Regents meeting, commencing with the 2016-2017 school year, districts will be allowed to employ an individual without a valid teaching certificate (and who is not pursuing certification) as a substitute teacher beyond the current 40 day limit, for up to an additional 50 days (90 days total) in limited circumstances where the district superintendent or superintendent certifies that the district or BOCES has conducted a good faith recruitment search and there are no available certified teachers that can perform the duties of such position.

##### 2. COMPLIANCE REQUIREMENTS:

Currently, school districts and BOCES may employ a substitute teacher to:

- individuals with a valid teaching certificate who can work for an unlimited number of days in any capacity unless employed more than on an itinerant basis in which case they must be employed in their certification area;
- individuals without a valid certificate, but who are working towards certification (taking college coursework) of a rate of not less than 6 semester hours per year. Service may be rendered in any capacity. If employed more than an itinerant basis, such employee must be employed in the area they are seeking certification; or
- individuals who are not certified or pursuing certification, however, these individuals are currently limited to work in a school district for 40 days during a school year.

### Proposed Amendment:

Based on feedback from the field, it appears that several school districts are having difficulty finding certified teachers to serve as substitute teachers in their districts. In many cases, the substitutes hired in category # 3 (above) have been recognized by the other teachers in their districts for their competency in the classroom and in covering the curriculum. However, upon reaching the 40 day limit, the district is currently forced to

find a replacement substitute teacher who may not have the same expertise and familiarity with the classroom and curriculum as the former substitute teacher demonstrated.

In order to address this issue, the proposed amendment to 80-5.4 of the Regulations of the Commissioner of Education allows a district or board of cooperative educational services to employ an individual without a valid teaching certificate (and who is not pursuing certification) as a substitute teacher beyond the current 40 day limit, for up to an additional 50 days (90 days total) in limited circumstances where the district superintendent or the superintendent certifies that the district or BOCES has conducted a good faith recruitment search and there are no available certified teachers that can perform the duties of the position.

The amendment also includes a provision that will extend the reporting requirements in section 80-5.4 of the Regulations of the Commissioner to require school districts or BOCES to report the number of substitute teachers without valid certificates that were authorized to work over the 40 days in the limited circumstances described above and provide the required certifications.

**3. PROFESSIONAL SERVICES:**

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

**4. COMPLIANCE COSTS:**

There are no additional costs on local governments. In fact, there may be a cost savings to districts and BOCES.

**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 of school districts having difficulty finding certified teachers to serve as substitute teachers, as this concern was raised by the field. Since the certification requirements apply equally to all school districts and BOCES throughout the State, the Department's recommendation was to apply the new rule to all districts and BOCES across the State.

**7. LOCAL GOVERNMENT PARTICIPATION:**

Copies of the rule have been provided to Superintendents and District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment.

**Rural Area Flexibility Analysis**

**1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

If adopted by the Board of Regents at the July 2016 Board of Regents meeting, commencing with the 2016-2017 school year, districts will be allowed to employ an individual without a valid teaching certificate (and who is not pursuing certification) as a substitute teacher beyond the current 40 day limit, for up to an additional 50 days (90 days total) in limited circumstances where the district superintendent or superintendent certifies that the district or BOCES has conducted a good faith recruitment search and there are no available certified teachers that can perform the duties of such position. This amendment applies to all districts and BOCES in New York employing substitute teachers, 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, school districts and BOCES may employ a substitute teacher to:

- individuals with a valid teaching certificate who can work for an unlimited number of days in any capacity unless employed more than on an itinerant basis in which case they must be employed in their certification area;
- individuals without a valid certificate, but who are working towards certification (taking college coursework) of a rate of not less than 6 semester hours per year. Service may be rendered in any capacity. If employed more than an itinerant basis, such employee must be employed in the area they are seeking certification; or
- individuals who are not certified or pursuing certification, however, these individuals are currently limited to work in a school district for 40 days during a school year.

**Proposed Amendment:**

Based on feedback from the field, it appears that several school districts are having difficulty finding certified teachers to serve as substitute teachers in their districts. In many cases, the substitutes hired in category # 3 (above) have been recognized by the other teachers in their districts for their competency in the classroom and in covering the curriculum. However, upon reaching the 40 day limit, the district is currently forced to find a replacement substitute teacher who may not have the same expertise and familiarity with the classroom and curriculum as the former substitute teacher demonstrated.

In order to address this issue, the proposed amendment to 80-5.4 of the Regulations of the Commissioner of Education allows a district or board

of cooperative educational services to employ an individual without a valid teaching certificate (and who is not pursuing certification) as a substitute teacher beyond the current 40 day limit, for up to an additional 50 days (90 days total) in limited circumstances where the district superintendent or the superintendent certifies that the district or BOCES has conducted a good faith recruitment search and there are no available certified teachers that can perform the duties of the position.

The amendment also includes a provision that will extend the reporting requirements in section 80-5.4 of the Regulations of the Commissioner to require school districts or BOCES to report the number of substitute teachers without valid certificates that were authorized to work over the 40 days in the limited circumstances described above and provide the required certifications.

**3. COSTS:**

The proposed amendment does not impose any costs on school districts or BOCES across the State, including those located in rural areas of the State. In fact, it may produce a cost savings to school districts and BOCES.

**4. MINIMIZING ADVERSE IMPACT:**

The rule seeks to address the issue of school districts having difficulty finding certified teachers to serve as substitute teachers, as this concern was raised by the field. Since the certification requirements apply equally to all school districts and BOCES throughout the State, the Department's recommendation was to apply the new rule to all districts and BOCES across the State.

**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 the issue of school districts having difficulty finding certified teachers to serve as substitute teachers in their districts by allowing districts and BOCES to employ an individual without a valid teaching certificate (and who is not pursuing certification) as a substitute teacher beyond the current 40 day limit, for up to an additional 50 days (90 days total) in limited circumstances where the district superintendent or the superintendent certifies that the district or BOCES has conducted a good faith recruitment search and there are no available certified teachers that can perform the duties of the position. The proposed amendment also requires districts and BOCES to comply with the reporting requirements in section 80-5.4 of the Regulations of the Commissioner by reporting the number of substitute teachers without a valid certificate that were authorized to work over the 40 days in the limited circumstances described above, and to provide the required certifications to the Department. Because the proposed amendment seeks to address an issue raised by the field in employing substitute teachers, 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.

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

**Licensing Examination Requirements for Certified Shorthand Reporters**

**I.D. No.** EDU-18-16-00007-P

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

**Proposed Action:** Amendment of section 71.3 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 7501(not subdivided) and 7504(1)

**Subject:** Licensing Examination Requirements for Certified Shorthand Reporters.

**Purpose:** To permit the department to accept a passing score on an exam determined by the State board to be acceptable for licensure.

**Text of proposed rule:** Section 71.3 of the Regulations of the Commissioner of Education is amended, effective July 27, 2016, as follows:

Section 71.3 Licensing examinations.

[(a) Content. The examination shall consist of five parts:

(1) Transcription test. Candidates will be required to write, from dictation, in manual shorthand or on a shorthand writing machine, such court proceedings as may be selected by the State Board for Certified Shorthand Reporting for seven minutes, at speeds varying from 175 to 225 words a minute and to transcribe all or a portion of such dictation.

(2) Oral test. Candidates will be required to read aloud, within a specified time, such portion of such dictated matter as the examiners may specify.

(3) Medical reporting test. Candidates will be required to write, from dictation, court testimony on a medical subject given at a rate of 175 words a minute for five minutes and to transcribe all or a portion of such dictation. Candidates may use a medical dictionary for assistance in this test.

(4) Legal terminology and procedure test. Written questions will be asked on legal terminology and procedures, rules of evidence and court structure.

(5) English test. Written questions will be asked about grammar, word usage, vocabulary and punctuation.

(b) Passing score. To qualify for licensure, a candidate shall pass all parts of the examination. The passing score shall be 95.0 for the transcription test, the oral test and the medical reporting test. The passing score shall be 75.0 on the legal and English tests. Candidates will be rated on the accuracy of the transcription, on their speed and accuracy in reading notes orally, and on the spelling, punctuation and arrangement of the transcripts. Candidates shall pass the transcription and oral tests at a single examination before the other tests will be scored.

(c) Retention of credit. A candidate who passes both the transcription and oral tests at a single examination shall retain credit for those tests and any other parts passed at that examination or at subsequent examinations.

(d) Creation of transcript. Transcripts created during the examination shall be on paper 8 1/2 inches by 11 inches and all transcripts shall be double-spaced. Candidates may write shorthand with either pen or pencil, or may use shorthand writing machines, and shall transcribe their shorthand notes on a typewriter or on transcription equipment which is acceptable to the State Board for Certified Shorthand Reporting based upon a determination that such transcription equipment uses technology and/or software in common usage in the practice as a certified shorthand reporter and would not provide the candidate with an unfair advantage over other candidates who would use during the examination transcription equipment that uses technology and/or software in common usage in the practice as a certified shorthand reporter. Transcription of shorthand notes in longhand shall be acceptable only in the event that a candidate's transcription equipment fails or malfunctions during the administration of the examination.

(e) Materials. Candidates shall be responsible for bringing to the examination materials that they plan to use during the examination, which shall include any of the following materials: notepaper or notebooks, stationery, medical dictionary, shorthand writing machines, pens, pencils, typewriters and transcription equipment.]

*The department may accept a passing score on an examination determined by the State Board for Certified Shorthand Reporting to be acceptable for licensure as a certified shorthand reporter.*

**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 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.

Section 7501 of the Education Law defines the practice of certified shorthand reporting.

Subdivision (1) of section 7504 of the Education Law authorizes the Commissioner of Education to promulgate regulations to establish the examination requirements for certified shorthand reporter licensure.

##### **2. LEGISLATIVE OBJECTIVES:**

The proposed amendment carries out the legislative intent of the aforementioned statutes that the Board of Regents and the Department to regulate the admission to and practice of the professions, including examination requirements for licensure.

The proposed amendment to section 71.3 of the Regulations of the Commissioner of Education will permit the Department to accept a passing score on an examination determined by the State Board for Certified

Shorthand Reporting to be acceptable for licensure as a certified shorthand reporter.

Currently, in order to become licensed as a certified shorthand reporter in New York State, a candidate must pass a five part licensing examination. Pursuant to subdivision (a) of section 71.3 of the Regulations of the Commissioner of Education, such examination consists of: (1) a transcription test which requires candidates to write from dictation, in shorthand, selected court proceedings for seven minutes and to transcribe all or a portion of such dictation; (2) an oral test which requires candidates to read aloud a portion of such dictated matter; (3) a medical reporting test which requires candidates to write from dictation, court testimony on a medical subject for five minutes and to transcribe all or a portion of such dictation; (4) a legal terminology and procedure test which includes written questions on legal terminology and procedures, rules of evidence and court structure; and (5) an English test which includes written questions about grammar, word usage, vocabulary and punctuation.

Due to Department resource issues, the examination has not kept pace with the technology available to the shorthand reporting profession. For example, the examination requires that a printed transcript be presented, while most shorthand reporters record their transcripts electronically and then submit them in an electronic format. Additionally, the lack of candidates for licensure in this profession has resulted in a significant strain on Department resources to annually create and administer a paper examination that is outmoded and no longer reflects the current practices of the profession. The Department has issued a total of 18 certified shorthand reporting licenses since 2011 as follows; 2011 – 8; 2012 – 4; 2013 – 4; and 2014 – 2. In 2015, the Department held the examination for one candidate but no licenses were issued that year. It should be noted that this is a title only profession and does not have a protected scope of practice. Anyone, including those without the certified shorthand reporter (CSR) designation, may practice shorthand reporting. A certified shorthand reporting license is not required to practice this profession in New York State.

Based on the foregoing, the Department has determined that it is no longer cost effective for it to create and administer the licensing examination for applicants for licensure as certified shorthand reporters.

The proposed amendment to section 71.3 of the Regulations of the Commissioner of Education addresses the aforementioned situation by removing the Department created and administered five part licensing examination requirement and replacing it with language that permits the Department to accept a passing score on an examination determined by the State Board for Certified Shorthand Reporting to be acceptable for licensure as a certified shorthand reporter.

The State Board for Certified Shorthand Reporting has recommended to the Department that the Registered Professional Reporter (RPR) examination offered and conducted by the National Court Reporters Association (NCRA) be accepted as meeting the examination requirements for licensure as a certified shorthand reporter. The RPR examination consists of two parts: (1) a written knowledge test that consists of questions in the areas of technology, reporting practices and professional practices; and (2) a skills test which evaluates skills in the areas of literary, jury charge and testimony/ questions and answers. The format of the current examination prepared by the Department is different than the format of the RPR examination; however, the testing content areas are comparable.

Additionally, unlike the examination created and administered by the Department, which is only offered once a year, the RPR examination is held throughout the year and offers more opportunity for the applicants to meet the examination requirement for licensure. Without the acceptance of the RPR examination, applicants will not be able to satisfy the examination requirement for licensure. Since the RPR examination is nationally recognized, an increase in the number of applicants for licensure is anticipated.

##### **3. NEEDS AND BENEFITS:**

The purpose of the proposed amendment to section 71.3 of the Regulations of the Commissioner of Education is to address the aforementioned situation and confer benefits as discussed in the Legislative Objectives section by removing the Department created and administered five part licensing examination requirement and replacing it with language that permits the Department to accept a passing score on an examination determined by the State Board for Certified Shorthand Reporting to be acceptable for licensure as a certified shorthand reporter.

##### **4. COSTS:**

The proposed amendment eliminates the Department created and administered five part licensure examination and replaces it with language that permits the Department to accept a passing score on an examination determined by the State Board for Certified Shorthand Reporting (State Board) to be acceptable for licensure as a certified shorthand reporter. It imposes no costs on the State or any local governments or the regulatory agency, but applicants will be required to pay the examination costs for any examination that the State has determined to be acceptable for licensure purposes.

(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. Applicants seeking licensure in New York State as certified shorthand reporters will be required to pay the examination costs for any examination that State Board has determined to be acceptable for licensure purposes. Currently, applicants for licensure are required to pay an examination fee of \$65 for the Department created and administered certified shorthand reporting licensure examination. As referenced above, the State Board has identified the RPR examination as an acceptable examination for licensure as a certified shorthand reporter. Presently, the total RPR examination costs are as follows: (1) \$367.50 for NCRA student members; (2) \$455 for NCRA reporter members; and \$555 for non-NCRA members.

(d) Costs to the regulatory agency. There are no additional costs to the State Education Department. In fact, the State Education Department will no longer incur the expense of creating and administering the certified shorthand reporting licensure examination.

#### 5. LOCAL GOVERNMENT MANDATES:

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

#### 6. PAPERWORK:

A Certification of Examination Grades form will be created by the Department specifically for NCRA to certify the examination scores. This form will be filed with the existing application paperwork and will require no additional recordkeeping responsibilities associated with the proposed amendment.

#### 7. DUPLICATION:

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

#### 8. ALTERNATIVES:

The proposed amendment arose out of the lack of resources within the Department to continue creating and administering the certified shorthand reporting licensure examination. Additionally, as discussed above, the lack of candidates for licensure in this profession has resulted in a significant strain on Department resources to annually create and administer a paper examination that is outmoded and no longer reflects the current practices of the profession. There are no significant alternatives to the proposed amendment and none were considered.

#### 9. FEDERAL STANDARDS:

No Federal standards apply to the subject matter of this rule making. The Federal government does not regulate the examination requirements for candidates for certified shorthand reporting licensure in New York State. 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 July 2016 Regents meeting, the proposed amendment will become effective July 27, 2016. It is anticipated that regulated parties will be able to comply with the proposed amendments by the effective date.

#### *Regulatory Flexibility Analysis*

Currently, in order to become licensed as a certified shorthand reporter in New York State, a candidate must pass a five part licensing examination. Pursuant to subdivision (a) of section 71.3 of the Regulations of the Commissioner of Education, such examination consists of: (1) a transcription test which requires candidates to write from dictation, in shorthand, selected court proceedings for seven minutes and to transcribe all or a portion of such dictation; (2) an oral test which requires candidates to read aloud a portion of such dictated matter; (3) a medical reporting test which requires candidates to write from dictation, court testimony on a medical subject for five minutes and to transcribe all or a portion of such dictation; (4) a legal terminology and procedure test which includes written questions on legal terminology and procedures, rules of evidence and court structure; and (5) an English test which includes written questions about grammar, word usage, vocabulary and punctuation. The examination is created by the State Board for Certified Shorthand Reporters and the Office of Professions' testing manager.

Due to Department resource issues, the examination has not kept pace with the technology available to the shorthand reporting profession. For example, the examination requires that a printed transcript be presented, while most shorthand reporters record their transcripts electronically and then submit them in an electronic format. Additionally, the lack of candidates for licensure in this profession has resulted in a significant strain on Department resources to annually create and administer a paper examination that is outmoded and no longer reflects the current practices of the profession. The Department has issued a total of 18 certified shorthand reporting licenses since 2011 as follows; 2011 – 8; 2012 – 4; 2013 – 4; and 2014 – 2. In 2015, the Department held the examination for

one candidate but no licenses were issued that year. It should be noted that this is a title only profession and does not have a protected scope of practice. Anyone, including those without the certified shorthand reporter (CSR) designation may practice shorthand reporting. A certified shorthand reporting license is not required to practice this profession in New York State.

Based on the foregoing, the Department has determined that it is no longer cost effective for it to create and administer the licensing examination for applicants for licensure as certified shorthand reporters.

The proposed amendment to section 71.3 of the Regulations of the Commissioner of Education addresses the aforementioned situation by removing the Department created and administered five part licensing examination requirement and replacing it with language that permits the Department to accept a passing score on an examination determined by the State Board for Certified Shorthand Reporting to be acceptable for licensure as a certified shorthand reporter.

The State Board for Certified Shorthand Reporting has recommended to the Department that the Registered Professional Reporter (RPR) examination offered and conducted by the National Court Reporters Association (NCRA) be accepted as meeting the examination requirements for licensure as a certified shorthand reporter. The RPR examination consists of two parts: (1) a written knowledge test that consists of questions in the areas of technology, reporting practices and professional practices; and (2) a skills test which evaluates skills in the areas of literary, jury charge and testimony/ questions and answers. The format of the current examination prepared by the Department is different than the format of the RPR examination; however, the testing content areas are comparable.

The proposed amendment is applicable to candidates for certified shorthand reporting licensure only. The proposed amendment will not affect small business or local governments in New York State. The proposed amendment will not impose any new reporting, recordkeeping, or any other compliance requirements, or have an 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*

Currently, in order to become licensed as a certified shorthand reporter in New York State, a candidate must pass a five part licensing examination. Pursuant to subdivision (a) of section 71.3 of the Regulations of the Commissioner of Education, such examination consists of: (1) a transcription test which requires candidates to write from dictation, in shorthand, selected court proceedings for seven minutes and to transcribe all or a portion of such dictation; (2) an oral test which requires candidates to read aloud a portion of such dictated matter; (3) a medical reporting test which requires candidates to write from dictation, court testimony on a medical subject for five minutes and to transcribe all or a portion of such dictation; (4) a legal terminology and procedure test which includes written questions on legal terminology and procedures, rules of evidence and court structure; and (5) an English test which includes written questions about grammar, word usage, vocabulary and punctuation. The examination is created by the State Board for Certified Shorthand Reporters and the Office of Professions' testing manager.

Due to Department resource issues, the examination has not kept pace with the technology available to the shorthand reporting profession. For example, the examination requires that a printed transcript be presented, while most shorthand reporters record their transcripts electronically and then submit them in an electronic format. Additionally, the lack of candidates for licensure in this profession has resulted in a significant strain on Department resources to annually create and administer a paper examination that is outmoded and no longer reflects the current practices of the profession. The Department has issued a total of 18 certified shorthand reporting licenses since 2011 as follows; 2011 – 8; 2012 – 4; 2013 – 4; and 2014 – 2. In 2015, the Department held the examination for one candidate but no licenses were issued that year. It should be noted that this is a title only profession and does not have a protected scope of practice. Anyone, including those without the certified shorthand reporter (CSR) designation may practice shorthand reporting. A certified shorthand reporting license is not required to practice this profession in New York State.

Based on the foregoing, the Department has determined that it is no longer cost effective for it to create and administer the licensing examination for applicants for licensure as certified shorthand reporters.

The proposed amendment to section 71.3 of the Regulations of the Commissioner of Education addresses the aforementioned situation by removing the Department created and administered five part licensing examination requirement and replacing it with language that permits the Department to accept a passing score on an examination determined by

the State Board for Certified Shorthand Reporting to be acceptable for licensure as a certified shorthand reporter.

The State Board for Certified Shorthand Reporting has recommended to the Department that the Registered Professional Reporter (RPR) examination offered and conducted by the National Court Reporters Association (NCRA) be accepted as meeting the examination requirements for licensure as a certified shorthand reporter. The RPR examination consists of two parts: (1) a written knowledge test that consists of questions in the areas of technology, reporting practices and professional practices; and (2) a skills test which evaluates skills in the areas of literary, jury charge and testimony/ questions and answers. The format of the current examination prepared by the Department is different than the format of the RPR examination; however, the testing content areas are comparable.

Additionally, unlike the Department created and administered examination, which is only offered once a year, the RPR examination is held throughout the year and offers more opportunity for the applicants to meet the examination requirement for licensure. Without the acceptance of the RPR examination, applicants will not be able to satisfy the examination requirement for licensure. Since the RPR examination is nationally recognized, an increase in the number of applicants for licensure is anticipated.

The proposed amendment is applicable only to candidates for licensure as certified shorthand reporters in New York State and 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 been prepared.

#### **Job Impact Statement**

Currently, in order to become licensed as a certified shorthand reporter in New York State, a candidate must pass a five part licensing examination. Pursuant to subdivision (a) of section 71.3 of the Regulations of the Commissioner of Education, such examination consists of: (1) a transcription test which requires candidates to write from dictation, in shorthand, selected court proceedings for seven minutes and to transcribe all or a portion of such dictation; (2) an oral test which requires candidates to read aloud a portion of such dictated matter; (3) a medical reporting test which requires candidates to write from dictation, court testimony on a medical subject for five minutes and to transcribe all or a portion of such dictation; (4) a legal terminology and procedure test which includes written questions on legal terminology and procedures, rules of evidence and court structure; and (5) an English test which includes written questions about grammar, word usage, vocabulary and punctuation. The examination is created by the State Board for Certified Shorthand Reporters and the Office of Professions' testing manager.

Due to Department resource issues, the examination has not kept pace with the technology available to the shorthand reporting profession. For example, the examination requires that a printed transcript be presented, while most shorthand reporters record their transcripts electronically and then submit them in an electronic format. Additionally, the lack of candidates for licensure in this profession has resulted in a significant strain on Department resources to annually create and administer a paper examination that is outmoded and no longer reflects the current practices of the profession. The Department has issued a total of 18 certified shorthand reporting licenses since 2011 as follows; 2011 – 8; 2012 – 4; 2013 – 4; and 2014 – 2. In 2015, the Department held the examination for one candidate but no licenses were issued that year. It should be noted that this is a title only profession and does not have a protected scope of practice. Anyone, including those without the certified shorthand reporter (CSR) designation may practice shorthand reporting. A certified shorthand reporting license is not required to practice this profession in New York State.

Based on the foregoing, the Department has determined that it is no longer cost effective for it to create and administer the licensing examination for applicants for licensure as certified shorthand reporters.

The proposed amendment to section 71.3 of the Regulations of the Commissioner of Education addresses the aforementioned situation by removing the Department created and administered five part licensing examination requirement and replacing it with language that permits the Department to accept a passing score on an examination determined by the State Board for Certified Shorthand Reporting to be acceptable for licensure as a certified shorthand reporter.

The State Board for Certified Shorthand Reporting has recommended to the Department that the Registered Professional Reporter (RPR) examination offered and conducted by the National Court Reporters Association (NCRA) be accepted as meeting the examination requirements for licensure as a certified shorthand reporter. The RPR examination consists of two parts: (1) a written knowledge test that consists of questions in the areas of technology, reporting practices and professional practices; and (2) a skills test which evaluates skills in the areas of literary, jury charge and testimony/ questions and answers. The format of the current examination

prepared by the Department is different than the format of the RPR examination; however, the testing content areas are comparable.

Additionally, unlike the Department created and administered examination, which is only offered once a year, the RPR examination is held throughout the year and offers more opportunity for the applicants to meet the examination requirement for licensure. Without the acceptance of the RPR examination, applicants will not be able to satisfy the examination requirement for licensure. Since the RPR examination is nationally recognized, an increase in the number of applicants for licensure is anticipated.

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, or have only a positive impact, no affirmative steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

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

### **Licensure of Professional Geologists and Continuing Education for Land Surveyors**

**I.D. No.** EDU-18-16-00008-P

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

**Proposed Action:** Amendment of section 29.3, Parts 52 and 68 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6509(9), 7200(not subdivided), 7204-a(not subdivided), 7204-b(not subdivided), 7206-b, 7205(not subdivided), 7207, 7208-a, 7209(1), (2), (4); L. 2014, chs. 61, 475; L. 2015, ch. 9

**Subject:** Licensure of Professional Geologists and Continuing Education for Land Surveyors.

**Purpose:** To establish the new profession of geology including licensure requirements, and extend continuing education for land surveyors.

**Substance of proposed rule (Full text is posted at the following State website: <http://www.regents.nysed.gov/meetings/2016/2016-04-professional-practice>):**

The Commissioner of Education proposes to amend section 29.3 of the Rules of the Board of Regents, add a new section 52.46 to the Regulations of the Commissioner of Education, and amend Part 68 of the Regulations of the Commissioner of Education to amend section 68.1, renumber and add new sections 68.7, 68.8, and 68.9, and renumber and amend sections 68.10 through 68.15 relating to the licensure of professional geologists under Article 145 of the Education Law. The proposed amendment would also amend renumbered section 68.15 relating to continuing education for land surveyors. The following is a summary of the proposed rule:

Subdivision (a) of section 29.3 of the Rules of the Board of Regents is amended to add the profession of professional geology to the list of design professions that are subject to its unprofessional conduct provisions.

Section 52.46 is added to the Regulations of the Commissioner of Education to establish the registration and curricular requirements for professional geologist education programs offered in New York State that lead to licensure as a professional geologist. The proposed amendment requires such programs to be a program in geological sciences or a substantially equivalent science as determined by the Department leading to a bachelor's degree or higher degree and must require the following: (1) a minimum of six semester hours in college level mathematics beyond algebra and trigonometry or their equivalent as determined by the Department; (2) a minimum of 15 semester hours or the equivalent as determined by the Department in a combination of at least two of the following sciences: (a) physics; (b) chemistry; (c) biology; or their equivalent as determined by the Department; and (3) a minimum of 30 semester hours in geological sciences or the equivalent as determined by the Department, of which 24 semester hours must include at least one course from four of the following eight subject areas: (a) earth materials; (b) sedimentary geology; (c) engineering geology (geo-technology); (d) surficial and near-surficial geology; (e) hydrogeology; (f) geodynamics; (g) economic geology; (h) geological skills/applications; or (i) their equivalent as determined by the Department.

Part 68 of the Regulations of the Commissioner of Education is amended to add the profession of geology to the title of Part 68 to conform it to Chapter 475 of the Laws of 2014.

Subdivision (b) of section 68.1 of the Regulations of the Commissioner of Education is amended to add the profession of geology to the name of the State Board.

Sections 68.7 through 68.12 of the Regulations of the Commissioner of Education are renumbered as sections 68.10 through 68.15, respectively.

A new section 68.7 of the Regulations of the Commissioner of Education is added to establish the professional study requirements for licensure as a professional geologist.

A new section 68.8 of the Regulations of the Commissioner of Education is added to establish the experience requirements for licensure as a professional geologist.

A new section 68.9 of the Regulations of the Commissioner of Education is added to establish the examination requirements for licensure as a professional geologist.

Renumbered section 68.10 of the Regulations of the Commissioner of Education is amended to establish the requirements for licensure by endorsement for out-of-state examination for professional geologists.

Renumbered section 68.11 of the Regulations of the Commissioner of Education is amended to conform the fees for limited permits to the statutory fee of \$105 and to establish the 30 day limited permit and project specific limited permit requirements for individuals, who are licensed in other jurisdictions, but unlicensed in New York State, who seek to provide geological services within this State. These requirements include, but are not limited to, the submission of the appropriate limited permit application to the Department, along with the required fee.

Renumbered section 68.13 of the Regulations of the Commissioner of Education is amended to add the profession of geology to the list of the design professions that are subject to its seal provisions.

Renumbered section 68.14 of the Regulations of the Commissioner of Education relating to continuing education for professional engineers is amended to add the profession of geology to the name of the State Board.

Renumbered section 68.15 of the Regulations of the Commissioner of Education relating to continuing education for land surveyors is amended to add the profession of geology to the name of the State Board, amend the expiration date for the mandatory continuing education requirement for land surveyors from June 30, 2014 to June 30, 2024 and amend an incorrect reference to the subdivision which imposes a fee on licensees for continuing education.

**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 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 7200 of the Education Law, as amended by Chapter 475 of the Laws of 2014, establishes the new profession of geology.

Section 7204-a of the Education Law, as added by Chapter 475 of the Laws of 2014, defines the profession of geology and the practice of geology by professional geologists.

Section 7204-b of the Education Law, as added by Chapter 475 of the Laws of 2014, establishes protection for the title "professional geologist."

Subdivision (1) of section 7206-b of the Education Law, as added by Chapter 475 of the Laws of 2014 and amended by Chapter 9 of the Laws of 2015, establishes the education, experience, examination, age and moral character requirements for applicants seeking licensure as a professional geologist, as well as establishes the fees required for both an initial license and subsequent triennial registrations.

Subdivision (2) of section 7206-b of the Education Law, as added by Chapter 475 of the Laws of 2014 and amended by Chapter 9 of the Laws of 2015, provides that twelve years of practical experience in geological work satisfactory to the State Board may be accepted by the Department in lieu of the education and experience requirements as otherwise specified in subdivision (1) of section 7206-b.

Subdivision (3) of section 7206-b of the Education Law, as added by Chapter 475 of the Laws of 2014, provides for an "intern geologist" identification card for applicants who fulfill the requirements of subdivi-

sion (1) of section 7206-b except the experience and age requirements, and admission to the examination when the applicant is within twenty credits of the completion of the requirements of the bachelor's degree or higher as prescribed in subdivision (1) or completion of the practical experience requirement of subdivision (2) of section 7206-b.

Subdivision (4) of section 7206-b of the Education Law, as added by Chapter 475 of the Laws of 2014, establishes a time limited licensure pathway for individuals to qualify for a license as a professional geologist, without a written examination, if they satisfy specified education and experience requirements and submit an application to the Department within one year of the November 21, 2016 effective date of this provision of the statute.

Section 7205 of the Education Law, as amended by Chapter 475 of the Laws of 2014, adds the profession of geology to the name of the State Board.

Subdivision (2) of section 7207 of the Education Law, as amended by Chapter 475 of the Laws of 2014, establishes the requirements for 30-day limited permits for applicants for licensure as professional geologists.

A new subdivision (3) of section 7207 of the Education Law, as added by Chapter 475 of the Laws of 2014, establishes the requirements for project specific limited permits.

Section 7208-a of the Education Law, as added by Chapter 475 of the Laws of 2014, establishes exemptions from the professional geologist licensure requirements.

Subdivisions (1), (2) and (4) of section 7209 of the Education Law, as amended by Chapter 475 of the Laws of 2014, require the use of seals and signatures by professional geologists on written geological drawings and reports prepared by such professional geologists.

Chapter 61 of the Laws of 2014 extends the expiration date for the mandatory continuing education requirement for land surveyors from June 30, 2014 to June 30, 2024.

##### **2. LEGISLATIVE OBJECTIVES:**

The proposed amendment is necessary to conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to Chapters 61 and 475 of the Laws of 2014, and Chapter 9 of the Laws of 2015. The proposed rule implements Chapter 475 of the Laws of 2014, which amended Article 145 of the Education Law, by establishing the requirements for licensure as a professional geologist, which include, but are not limited to, professional education, experience, examination and limited permit requirements. Chapter 9 of the Laws of 2015 amended Chapter 475 to make changes necessary to the implementation of Chapter 475. The proposed rule also implements the statute by subjecting professional geologists to the unprofessional conduct provisions for the design professions. In addition, the proposed rule implements the statute by establishing program registration and curriculum requirements for programs offered in New York State that lead to licensure. Chapter 475 of the Laws of 2014 also provides a grandparenting licensure pathway for individuals to qualify for a license as a professional geologist, without a written examination, if they satisfy specified education and experience requirements and submit an application to the Department within one year of the November 21, 2016 effective date of this provision of the statute. Although this pathway will expire on November 20, 2017, the licenses issued under it will not. The proposed rule also implements Chapter 61 of the Laws of 2014 which extends the expiration date for the mandatory continuing education requirement for land surveyors from June 30, 2014 to June 30, 2024.

##### **3. NEEDS AND BENEFITS:**

The proposed amendment is necessary to conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to Chapters 61 and 475 of the Laws of 2014, and Chapter 9 of the Laws of 2015. Rendering scientific expert opinion regarding geological conditions to New York State or local government agencies and the public can have significant impact on the environmental quality of New York State and on the safety, property and well-being of its citizens. Geologists routinely conduct investigations and provide interpretive geologic services related to the development and protection of groundwater resources, the assessment and development of New York State's mineral, gas, and oil reserves, and the environmental clean-up of hazardous wastes and the potential for migration of contamination. The purpose of the proposed rule is to establish the practice of geology as a licensed profession in New York State and to establish education, examination and experience requirements for licensure in order to protect the public by providing for a minimum standard level of competency and professional accountability, including subjecting professional geologists to the unprofessional conduct provisions for the design 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. As required by Education Law § 7206-b(1)(g), applicants for licensure as professional geologists must pay a fee to the Department of \$220 for their initial license and a triennial registration fee of \$210. Additionally, as required by Education Law § 7206-b(3), applicants for licensure seeking an identification card as an “intern geologist,” must pay a fee of \$70 to the Department for the examination and identification card as an “intern geologist” and a \$70 fee for each reexamination. Applicants for licensure must also pay a fee, pursuant to Education Law § 7207(4), to the Department of \$105 for a limited permit. Higher education institutions that seek to register geology 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 such costs will be minimal because several higher education institutions are already offering courses that would or could, with adjustments, meet the registration requirements for a geology education program, and higher education institutions should be able to use their existing staffs and resources to revise their courses and curricula to meet the professional geologist education requirements.

(d) Cost 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 Chapter 475 of the Laws of 2014 and Chapter 9 of the Laws of 2015, which amended Article 145 of the Education Law, by establishing the standards for individuals to be licensed to practice as professional geologists and standards for professional geologist education programs provided by institutions of higher education to ensure that only those properly educated and prepared to be professional geologists hold themselves out as such. The proposed rule does not impose any program, service, duty, or responsibility upon local governments.

#### 6. PAPERWORK:

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

#### 7. DUPLICATION:

The proposed rule is necessary to implement Chapters 61 and 475 of the Laws of 2014 and Chapter 9 of the Laws of 2015. There are no other state or federal requirements on the subject matter of the proposed rule. Therefore, the proposed rule does not duplicate other existing New York State or federal requirements.

#### 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 Chapters 61 and 475 of the Laws of 2014 and Chapter 9 of the Laws of 2015. There are no significant alternatives to the proposed rule available and none were considered.

#### 9. FEDERAL STANDARDS:

Since there are no applicable federal standards, 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 Chapters 61 and 475 of the Laws of 2014 and Chapter 9 of the Laws of 2015. If adopted at the June 2016 Regents meeting, the proposed amendment will become effective on November 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 proposed rule is to implement Chapter 475 of the Laws of 2014, which establishes and defines the practice of the profession of geology and Chapter 9 of the Laws of 2015, which amended Chapter 475 to make changes necessary to the implementation of Chapter 475. The proposed rule also implements Chapter 61 of the Laws of 2014 which extends the expiration date for the mandatory continuing education requirement for land surveyors from June 30, 2014 to June 30, 2024.

Chapter 475 also provides a grandparenting licensure pathway for individuals to qualify for a license as a professional geologist, without a written examination, if they satisfy specified education and experience requirements and submit an application to the Department within one year of the November 21, 2016 effective date of this provision of the statute. Although this pathway will expire on November 20, 2017, 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 475 of the Laws of 2014 and Chapter 9 of the Laws of 2015, which establish the new profession of geology and the requirements for licensure as a professional geologist. These requirements include, but are not limited to, professional education, experience and examination 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 education, experience, and examination requirements specified in the proposed rule. Individuals, who are licensed in other jurisdictions, but unlicensed in New York State, who seek to provide geological services within this State and meet requirements specified in the proposed rule, will be required to submit either a 30 day limited permit application or a project specific limited permit application to the State Education Department. Unless one of the exemptions contained in Education Law § 7208-a applies, the proposed rule will require small businesses and local governments to use only professional geologists to provide geological services.

#### 3. PROFESSIONAL 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, the proposed rule will require small businesses and local governments to use only professional geologists to provide geological services. Education Law § 7206-b(1)(g), as added by Chapter 475 of the Laws of 2014 and amended by Chapter 9 of the Laws of 2015, requires a fee of \$220 for an initial license and a fee of \$210 for each triennial registration for professional geologists. Education Law § 7206-b(3), as added by Chapter 475 of the Laws of 2014 and amended by Chapter 9 of the Laws of 2015, requires applicants for licensure seeking an identification card as an “intern geologist,” to pay a fee of \$70 to the Department for the examination and identification card and a \$70 fee for each reexamination. Pursuant to Education Law § 7207(2), (3) and (4), unlicensed individuals seeking to provide geological services within New York State: (i) for no more than 30 days, in the aggregate, in any calendar year; or (ii) in relation to a specific project within this State, must submit a limited permit application to the Department, along with \$105 for a limited permit fee.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule will not impose any new 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 475 of the Laws of 2014 and Chapter 9 of the Laws of 2015, which establish the new profession of geology and the licensure requirements for professional geologists. These requirements include, but are not limited to, professional education, experience, and examination requirements. Chapters 475 and Chapter 9 authorize the State Education Department to define, in regulation, the standards to be met for licensure as a professional geologist. 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, the professional education, experience and examination requirements specified in the proposed rule. Unlicensed individuals seeking to work in this State for a limited time period or on a specified project must satisfy the limited permit requirements specified in the proposed rule. The proposed fee structure was determined by the legislature to be the minimum needed to support additional costs. It is on par with fee structures in other professions. It was determined that the licensure of professional geologists who meet the 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 geology, including the State Board for Engineering, Land Surveying and Geology, an external advisory committee of individuals who practice geology in a variety of geographic regions and who are members of various professional associations and groups, geological sciences educators which include members who have experience in small business environments, and state and federal employees, were consulted and provided input into the development of the proposed rule and their 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 a

professional geologist and to higher education institutions seeking to register professional geologist education programs with the State Education Department, including those located in the 44 counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square miles or less.

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

As required by Chapter 475 of the Laws of 2014 and Chapter 9 of the Laws of 2015, which both become effective November 21, 2016, the proposed rule establishes the new profession of geology and the requirements for licensure as a professional geologist which include, but are not limited to, professional education, experience, and examination requirements. Chapter 9 of the Laws of 2015 amended Chapter 475 to make changes necessary to the implementation of Chapter 475.

Chapter 475 of the Laws of 2014 also provides a grandparenting licensure pathway for individuals to qualify for a license as a professional geologist, without a written examination, if they satisfy specified education and experience requirements and submit an application to the Department within one year of the November 21, 2016 effective date of this provision of the statute. Although this pathway will expire on November 20, 2017, the licenses issued under it will not.

As required by Chapter 475 of the Laws of 2014, individuals, who are licensed in other jurisdictions, but unlicensed in New York State, who seek to provide geological services within this State and meet requirements specified in the proposed rule, will be required to submit either a 30 day limited permit application or a project specific limited permit application to the State Education Department.

Additionally, as required by Chapter 61 of the Laws of 2014, the proposed rule extends the expiration date for the mandatory continuing education requirement for land surveyors from June 30, 2014 to June 30, 2024.

The proposed amendment of subdivision (a) of section 29.3 of the Rules of the Board of Regents adds the profession of geology to the list of design professions that are subject to its unprofessional conduct provisions.

The proposed addition of section 52.46 to the Regulations of the Commissioner of Education establishes the program registration requirements for professional geologist education programs. These requirements include registration and curriculum requirements for programs offered in New York State that lead to licensure as a professional geologist. The proposed amendment requires professional geologist education programs to be a program in geological sciences or a substantially equivalent science as determined by the Department leading to a bachelor's degree or higher degree, which must require the following: (1) a minimum of six semester hours in college level mathematics beyond algebra and trigonometry, such as calculus, statistics, linear algebra, differential equations or their equivalent as determined by the Department; (2) a minimum of 15 semester hours or the equivalent as determined by the Department in a combination of at least two of the following sciences: (a) physics; (b) chemistry; (c) biology; or their equivalent as determined by the Department; and (3) a minimum of 30 semester hours in geological sciences coursework or the equivalent as determined by the Department, of which 24 semester hours must include at least one course from four of the following eight subject areas: (a) earth materials; (b) sedimentary geology; (c) engineering geology (geotechnological); (d) surficial and near-surficial geology; (e) hydrogeology; (f) geodynamics; (g) economic geology; (h) geological skills/applications; or (i) their equivalent as determined by the Department.

The proposed amendment of the title of Part 68 of the Regulations of the Commissioner of Education conforms the Commissioner's regulations to Chapter 475 by adding the profession of geology.

The proposed amendment of subdivision (b) of section 68.1 of the Regulations of the Commissioner of Education amends the name of the State Board to include the profession of geology.

The proposed amendment of sections 68.7 through 68.12 of the Regulations of the Commissioner of Education reflects the renumbering of these sections as sections 68.10 through 68.15, respectively.

The proposed addition of new sections 68.7, 68.8, and 68.9 of the Regulations of the Commissioner of Education establish the requirements for licensure, including professional education, experience, and examination requirements.

The proposed amendment of renumbered section 68.10 of the Regulations of the Commissioner of Education establishes the requirements for licensure by endorsement of out-of-state examination for professional geologists.

The proposed amendment of renumbered section 68.11 of the Regulations of the Commissioner of Education conforms the fee for limited permits to the statutory fee of \$105 and establishes requirements for 30 day and project specific limited permits for individuals, who are licensed in other jurisdictions, but unlicensed in New York State, who seek to provide geological services within this State. These requirements include, but are not limited to, the submission of the appropriate limited permit application to the Department and the required fee.

The proposed amendment of renumbered section 68.13 of the Regulations of the Commissioner of Education adds the profession of geology to the list of design professions that are subject to its seals provisions.

The proposed amendment of renumbered section 68.14 of the Regulations of the Commissioner of Education relating to continuing education for professional engineers amends the name of the State Board to include the profession of geology.

The proposed amendment of renumbered section 68.15 of the Regulations of the Commissioner of Education relating to continuing education for land surveyors amends the name of the State Board to include the profession of geology, amends the expiration date for the mandatory continuing education requirement for land surveyors from June 30, 2014 to June 30, 2024, and makes a technical correction.

The proposed rule will not require any higher education institution to offer an education program that leads to licensure as a professional geologist. 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 geological sciences education program with the Department. Such higher education institutions will have reporting and record keeping obligations related to the development and maintenance of their geological sciences 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, the professional education, experience and examination requirements specified in the proposed rule.

The Department may issue a limited permit to practice as a professional geologist in New York State, when such practice does not aggregate more than 30 days in any calendar year, to a person not a resident of this State and having no established place of practice in this State, provided that such applicant submits a complete application that includes, among other things: (i) the applicant's current residential and employment addresses; and (ii) the specific dates of anticipated practice. The applicant must also submit a permit fee of \$105 and payment of the statutory registration fee. In addition, a written confirmation must be submitted to the Department by the appropriate licensing authority, that the applicant is legally qualified to practice as a professional geologist or the equivalent in his or her own state or country.

Additionally, upon recommendation of the State Board for Engineering, Land Surveying and Geology, the Department may issue to a geologist who is not a resident of New York State and having no established place of practice in this State a limited permit to practice geology solely in connection with a single specified project and subject to the same registration and revocation restrictions as a license, provided that such applicant submits a complete application that includes: (i) the applicant's current residential and employment addresses; (ii) a description of the project for which the limited permit is requested; and (iii) a detailed description of experience satisfactory to the State Board for Engineering, Land Surveying and Geology and of a nature related to the project in this State for which the limited permit is requested. The applicant must submit a permit fee of \$105 and payment of the statutory registration fee. In addition, at least two satisfactory certifications as to the character and qualifications of the applicant must be submitted to the Department by licensed professional geologists, at least one of whom must be a resident of this State. Written confirmation must also be submitted to the Department by the appropriate licensing authority, that the applicant is legally qualified to practice as a professional geologist or its equivalent in his or her state or country.

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

### 3. COSTS:

With respect to individuals seeking licensure as a professional geologist from the State Education Department, including those in rural areas, the proposed rule does not impose any additional costs beyond those required by statute. As required by Education Law § 7206-b(1)(g), applicants for licensure as professional geologists must pay a fee to the Department of \$220 for their initial license and a triennial registration fee of \$210. Additionally, as required by Education Law § 7206-b(3), applicants for licensure seeking an identification card as an "intern geologist," must pay a fee of \$70 to the Department for the examination and identification card as an "intern geologist" and a \$70 fee for each reexamination.

Pursuant to Education Law § 7207(2), (3) and (4), individuals, who are licensed in other jurisdictions, but unlicensed in New York State, who seek to provide geological services within this State and meet requirements specified in the proposed rule, will be required to submit either a 30 day limited permit application or a project specific limited permit application to the State Education Department, along with a \$105 limited permit fee.

Moreover, after the expiration of the grandparenting pathway to

licensure on November 20, 2017, applicants for licensure as a professional geologist will incur the cost of a bachelor's degree-level or higher degree-level education.

The proposed rule will not require higher education institutions to offer education programs that prepare individuals for licensure as a professional geologist. However, higher education institutions that seek to register geological sciences 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 several higher education institutions are already offering courses that would or could, with adjustments, meet the registration requirements for a geological sciences 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 professional geologist education requirements.

#### 4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement the provisions of Chapter 475 of the Laws of 2014 and Chapter 9 of the Laws of 2015, which establish the new profession of geology and the licensure requirements for licensed professional geologists, 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. Nor do they make exceptions for higher education institutions located 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 professional geologist and all higher education institutions seeking to register licensure-qualifying geological sciences education programs with the Department, regardless of the geographic location, to help insure continuing competency across the State. The Department has also determined that uniform standards for the Department's review of prospective licensure-qualifying geological sciences education programs are necessary to ensure quality geologist education 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 parties having an interest in the practice of geology. These organizations included the State Board for Engineering, Land Surveying and Geology, an external advisory committee of individuals who practice geology in a variety of geographic regions and who are members of various professional associations and groups, as well as representatives from academia. These groups have members who live or work or provide geological services 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 the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory requirements of Chapters 61 and 475 of the Laws of 2014 and Chapter 9 of the Laws of 2015, and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

#### **Job Impact Statement**

The proposed rule is necessary to conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to Chapters 61 and 475 of the Laws of 2014, and Chapter 9 of the Laws of 2015. The proposed rule implements Chapter 475 of the Laws of 2014 and Chapter 9 of the Laws of 2015, which establish and define the practice of geology. The proposed amendment to subdivision (a) of section 29.3 of the Rules of the Board of Regents adds the profession of geology to the list of design professions that are subject to its unprofessional conduct provisions. The proposed addition of 52.46 to the Regulations of the Commissioner of Education establishes the program registration requirements for professional geologist education programs. These requirements include registration and curriculum requirements for programs offered in New York State that lead to licensure as a professional geologist. The proposed amendment requires professional geologist education programs to be a program in geological sciences or a substantially equivalent science as determined by the Department leading to a bachelor's degree or higher degree, which must require the following: (1) a minimum of six semester hours in college level mathematics beyond algebra and trigonometry, such as calculus, statistics, linear algebra, differential equations or their equivalent as determined by the Department; (2) a minimum of 15 semester hours or the equivalent as determined by the Department in a combination of at

least two of the following sciences: (a) physics; (b) chemistry; (c) biology; or their equivalent as determined by the Department; and (3) a minimum of 30 semester hours in geological sciences coursework or the equivalent as determined by the Department, of which 24 semester hours must include at least one course from four of the following eight subject areas: (a) earth materials; (b) sedimentary geology; (c) engineering geology (geotechnical); (d) surficial and near-surficial geology; (e) hydrogeology; (f) geodynamics; (g) economic geology; (h) geological skills/applications; or (i) their equivalent as determined by the Department.

The proposed amendment of Part 68 of the Regulations of the Commissioner of Education amends the title of Part 68 to conform to Chapter 475 by adding the profession of geology.

The proposed amendment of subdivision (b) of section 68.1 of the Regulations of the Commissioner of Education amends the name of the State Board to include the profession of geology.

The proposed amendment of sections 68.7 through 68.12 of the Regulations of the Commissioner of Education reflects the renumbering of these sections as sections 68.10 through 68.15, respectively.

The proposed addition of new sections 68.7, 68.8, and 68.9 of the Regulations of the Commissioner of Education establish the requirements for licensure, including professional education, experience, and examination requirements.

The proposed amendment of renumbered section 68.10 of the Regulations of the Commissioner of Education establishes the requirements for licensure by endorsement of out-of-state examination for professional geologists.

The proposed amendment of renumbered section 68.11 of the Regulations of the Commissioner of Education conforms the fee for limited permits to the statutory fee of \$105 and establishes requirements for 30 day and project specific limited permits for individuals, who are licensed in other jurisdictions, but unlicensed in New York State, who seek to provide geological services within this State. These requirements include, but are not limited to, the submission of the appropriate limited permit application to the Department and the required fee.

The proposed amendment of renumbered section 68.13 of the Regulations of the Commissioner of Education adds the profession of geology to the list of design professions that are subject to its seals provisions.

The proposed amendment of renumbered section 68.14 of the Regulations of the Commissioner of Education relating to continuing education for professional engineers amends the name of the State Board to include the profession of geology.

The proposed amendment of renumbered section 68.15 of the Regulations of the Commissioner of Education relating to continuing education for land surveyors amends the name of the State Board to include the profession of geology, amends the expiration date for the mandatory continuing education requirement for land surveyors from June 30, 2014 to June 30, 2024, and makes a technical correction.

It is not anticipated that the proposed rule will increase or decrease the number of jobs to be filled because, among other things, Chapter 475 of the Laws of 2014 provides for a grandparenting licensure pathway for individuals to qualify for a license as a professional geologist, without a written examination, if they satisfy specified education and degree requirements and submit an application to the Department within one year of the November 21, 2016 effective date of this provision of the statute. Although this pathway will expire on November 20, 2017, 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**

### **Endorsement of Out-of-State Certificates for Teaching and Educational Leadership**

**I.D. No.** EDU-18-16-00009-P

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

**Proposed Action:** Amendment of sections 80-5.8 and 80-5.20 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 305(1), 3001, 3004(1), 3006(1), 3007(1), (2) and 3009

**Subject:** Endorsement of out-of-state certificates for teaching and educational leadership.

**Purpose:** The purpose of the proposed amendment is to provide an alternative pathway for endorsement of out-of-state certificates for service as a teacher, school district leader, school district business leader and school building leader in New York State without taking the State certification exams if they meet certain requirements, including three years of satisfactory experience in a public school outside this State with effective or higher evaluation ratings. The proposed amendment also adds a new subdivision to section 80-5.20 of the Regulations to add an endorsement pathway for school building leaders seeking to obtain an initial certificate in this State.

**Text of proposed rule:**

1. Subdivision (a) of section 80-5.8 of the Regulations of the Commissioner of Education, is amended, effective July 27, 2016, to read as follows:

§ 80-5.8. Endorsement of certificates for services as a teacher in the classroom teaching service and recognition of substantially equivalent out-of-state teacher education programs for service as a teacher in the classroom teaching service in New York State.

(a) Endorsement of certificates for service as a teacher in the classroom teaching service.

(1) The commissioner may endorse the certificate or an equivalent authorization to practice from another state or territory of the United States or the District of Columbia for service as a teacher in the classroom teaching service, provided that the candidate meets the following requirements:

(i) The candidate shall hold a valid certificate or equivalent authorization to practice from another state or territory of the United States or the District of Columbia that is equivalent to the title and type of the certificate sought.

(ii) The candidate shall meet the general requirements for certificates prescribed in Subpart 80-1 of this Part, including but not limited to the requirements of section 80-1.3 relating to citizenship, section 80-1.4 relating to study in child abuse identification and reporting, and school violence prevention and intervention; section 80-1.13 relating to coursework or training in harassment, bullying and discrimination prevention and intervention; and section 80-1.1 relating to a criminal history check.

(iii) *The candidate shall hold a baccalaureate or higher degree from a regionally accredited institution or a higher education institution that the commissioner deems substantially equivalent. Candidates shall have achieved a 2.5 cumulative grade point average, or its equivalent, in the program leading to the degree.*

(iv) The candidate shall either:

(a) (1) have completed a teacher education program from a regionally accredited institution of higher education or a higher education institution that the Commissioner deems substantially equivalent, provided that such program leads to an initial certificate, or a similar certificate title and type, in the jurisdiction in which the higher education institution is located; and

(2) *meet the examination requirements for the title and type of certificate sought in this State; except if a candidate meets all the examination requirements except the teacher performance assessment, if required for the certificate type and title sought, the candidate shall be issued a one-year nonrenewable conditional initial certificate, provided that the candidate meets the requirements of section 80-5.17 of this Subpart; or*

(b) (1) have at least three years of satisfactory experience in a public school (grades birth-12) in another state or territory of the United States or the District of Columbia in a position that would have required the equivalent of an initial or professional certificate in the certificate title sought as a teacher in the classroom teaching service for employment in New York State and while under a certificate issued by such other state authorizing such service, such experience must have been completed within five years immediately preceding the application for endorsement of the out-of-state certificate; or the candidate shall have equivalent experience as determined by the Commissioner; and

(2) *submit satisfactory evidence that the candidate received evaluation ratings of effective or highly effective, or the substantial equivalent of such ratings, in each of his or her three most recent years of experience in a public school in another state or territory of the United States or the District of Columbia in the certificate title sought as a teacher in the classroom teaching service for employment in New York State.*

(iv) Degree. The candidate shall hold a baccalaureate or higher degree from a regionally accredited institution or a higher education institution that the commissioner deems substantially equivalent. Candidates shall have achieved a 2.5 cumulative grade point average, or its equivalent, in the program leading to the degree.

(v) Examination. The candidate shall meet the examination requirements for the title and type of certificate sought in this State.]

(2) Such candidate who meets the endorsement requirements in paragraph (1) of this subdivision shall be issued an initial certificate as a teacher in the classroom teaching service pursuant to the requirements of this Part.

[ (3) If a candidate meets all of the requirements for endorsement set forth in paragraph (1) of this subdivision, except the teacher performance assessment, if required for the certificate type and title sought, the candidate shall be issued a one-year nonrenewable conditional initial certificate, provided that the candidate meets the requirements of section 80-5.17 of this Subpart.]

(b) ...

2. Section 80-5.20 of the Regulations of the Commissioner of Education is amended, effective July 27, 2016, to read as follows:

80-5.20 Endorsement of certificates for service as a school district leader, school district business leader, and school building leader.

(a) School district leader.

(1) The commissioner may endorse the certificate of another state or territory of the United States or the District of Columbia for service as a school district leader, provided that the candidate meets the following requirements:

(i) The candidate shall hold a valid certificate of another state or territory of the United States or the District of Columbia that is equivalent to the professional certificate as a school district leader.

(ii) The candidate shall meet the general requirements for certificates prescribed in Subpart 80-1 of this Part, including but not limited to the requirements of section 80-1.3 relating to citizenship, section 80-1.4 relating to study in child abuse identification and reporting and school violence prevention and intervention, section 80-1.13 relating to study in harassment, bullying and discrimination prevention [and school violence prevention and intervention]; and section 80-1.11 relating to a criminal history record check.

(iii) The candidate shall hold a master's or higher degree from a regionally accredited higher education institution or an equivalently approved higher education institution as determined by the department, or have equivalent educational preparation as determined by the commissioner.

(iv) (a) The candidate shall have had at least three years of satisfactory experience in a public school (grades N-12) in another state or territory of the United States or the District of Columbia in a position that would have required the professional certificate as a school district leader for employment in New York State and while under a certificate issued by such other state authorizing such service, which experience must have been completed within [ten] five years immediately preceding the application for endorsement of the out-of-state certificate; or the candidate shall have equivalent experience as determined by the commissioner; and

(b) *shall submit satisfactory evidence that the candidate received evaluation ratings of effective or highly effective, or the substantial equivalent of such ratings, in each of his or her three most recent years of experience in a public school in another state or territory of the United States or the District of Columbia in the certificate title sought as a school district leader for employment in New York State.*

(v) Examination requirement.

(a) Any candidate applying for a professional certificate as a school district leader through endorsement of a certificate of another state or territory pursuant to the provisions of this section on or after October 2, 2013 shall achieve a satisfactory level of performance on the school district leader examination.

(b) Any candidate applying for a professional certificate as a school district leader through endorsement of a certificate of another state or territory pursuant to the provisions of this section on or after May 1, 2014 or who applies for certificate on or before April 30, 2014 but does not meet all the requirements for a professional certificate on April 30, 2014 shall submit evidence of achieving a satisfactory level of performance on the educating all students test.]

(2) Such candidate who meets the endorsement requirements in paragraph (1) of this subdivision shall be issued a professional certificate as a school district leader. [The professional certificate as a school district leader shall be continuously valid, provided that the professional development requirement prescribed in section 80-3.6 of this Part is met by the professional certificate holder. The professional certificate holder shall be required to meet such professional development requirement to maintain the continued validity of the professional certificate.]

(b) School district business leader.

(1) The commissioner may endorse the certificate of another state or territory of the United States or the District of Columbia for service as a school district business leader, provided that the candidate meets the following requirements:

(i) The candidate shall hold a valid certificate of another state or territory of the United States or the District of Columbia that is equivalent to the professional certificate as a school district business leader.

(ii) The candidate shall meet the general requirements for certificates prescribed in Subpart 80-1 of this Part, including but not limited to the requirements of section 80-1.3 relating to citizenship, section 80-1.4 relating to study in child abuse identification and reporting and school

violence prevention and intervention, section 80-1.13 relating to study in harassment, bullying and discrimination prevention [and school violence prevention and intervention]; and section 80-1.11 relating to a criminal history record check.

(iii) The candidate shall hold a master's or higher degree from a regionally accredited higher education institution or an equivalently approved higher education institution as determined by the department, or have equivalent educational preparation as determined by the commissioner.

(iv) (a) The candidate shall have had at least three years of satisfactory experience in a public school (grades N-12) in another state or territory of the United States or the District of Columbia in a position that would have required the professional certificate as a school district business leader for employment in New York State and while under a certificate issued by such other state authorizing such service, which experience must have been completed within [ten] five years immediately preceding the application for endorsement of the out-of-state certificate; or the candidate shall have equivalent experience as determined by the commissioner; and

(b) shall submit satisfactory evidence that the candidate received evaluation ratings of effective or highly effective, or the substantial equivalent of such ratings, in each of his or her three most recent years of experience in a public school in another state or territory of the United States or the District of Columbia in the certificate title sought as a school district business leader for employment in New York State.

(2) Such candidate who meets the endorsement requirements in paragraph (1) of this subdivision shall be issued a professional certificate as a school district business leader. [The professional certificate as a school district business leader shall be continuously valid, provided that the professional development requirement prescribed in section 80-3.6 of this Part is met by the professional certificate holder. The professional certificate holder shall be required to meet such professional development requirement to maintain the continued validity of the professional certificate.]

(c) *School Building Leader*

(1) The commissioner may endorse the certificate of another state or territory of the United States or the District of Columbia for service as a school building leader, provided that the candidate meets the following requirements:

(i) The candidate shall hold a valid certificate of another state or territory of the United States or the District of Columbia that is equivalent to the initial certificate as a school building leader.

(ii) The candidate shall meet the general requirements for certificates prescribed in Subpart 80-1 of this Part, including but not limited to the requirements of section 80-1.3 relating to citizenship, section 80-1.4 relating to study in child abuse identification and reporting and school violence prevention and intervention, section 80-1.13 relating to study in harassment, bullying and discrimination prevention; and section 80-1.11 relating to a criminal history record check.

(iii) The candidate shall hold a master's or higher degree from a regionally accredited higher education institution or an equivalently approved higher education institution as determined by the department, or have equivalent educational preparation as determined by the commissioner.

(iv) (a) The candidate shall have had at least three years of satisfactory experience in a public school (grades N-12) in another state or territory of the United States or the District of Columbia in a position that would have required the initial certificate as a school building leader for employment in New York State and while under a certificate issued by such other state authorizing such service, which experience must have been completed within five years immediately preceding the application for endorsement of the out-of-state certificate; or the candidate shall have equivalent experience as determined by the commissioner; and

(b) shall submit satisfactory evidence that the candidate received evaluation ratings of effective or highly effective, or the substantial equivalent of such ratings, in each of his or her three most recent years of experience in a public school in another state or territory of the United States or the District of Columbia in the certificate title sought as a school building leader for employment in New York State.

(2) Such candidate who meets the endorsement requirements in paragraph (1) of this subdivision shall be issued an initial certificate as a school building leader.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kirti Goswami, New York State Education Department, Room 148, 89 Washington Avenue, Albany, New York 12047, (618) 474-8966, email: legal@nysed.gov

**Data, views or arguments may be submitted to:** Peg Rivers, New York State Education Department, Room 979, 89 Washington Avenue, Albany, New York 12047, (518) 408-1118, email: regcomments@nysed.gov

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

**Regulatory Impact Statement**

1. STATUTORY AUTHORITY:

Education Law 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 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 3001 establishes the qualifications of teachers in the classroom.

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

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

Education Law 3007(1) and (2) authorizes the Commissioner of Education to in his or her discretion endorse a diploma issued by a teachers college in another state or a certificate issued by the chief educational officer or state board of another state.

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendments to section 80-5.8 and 80-5.20 of the Regulations of the Commissioner of Education authorizes certain teachers, school district leaders, school district business leaders and/or school building leaders holding a valid certificate from another state to become certified in New York State if they meet certain requirements without being required to take and pass the State certification requirements applicable to the certificate title sought.

3. NEEDS AND BENEFITS:

Current Endorsement Requirements:

Section 80-5.8 of the Commissioner's regulations currently requires candidates seeking endorsement of a certificate or an equivalent authorization to practice from another state or territory of the U.S. or the District of Columbia for service as a teacher in the classroom teaching service in New York to:

(1) hold a valid teaching certificate or equivalent authorization to practice from another state or territory of the U.S. or District of Columbia;

(2) meet the general certificate requirements in Subpart 80-1, including requirements relating to citizenship, study in child abuse identification and reporting, school violence prevention and intervention, training in harassment, bullying and discrimination prevention and intervention, and a criminal history check;

(3) have at least three years of satisfactory experience in a public school in another state or territory of the U.S. or District of Columbia in a position that would have required an initial or professional certificate (which must have been completed within five years immediately preceding application for endorsement of the out-of-state certificate) or the equivalent of this experience as determined by the Commissioner;

(4) hold a baccalaureate or higher degree from a regionally accredited institution or a higher education institution that the commissioner deems the substantial equivalent (with a minimum cumulative GPA of 2.5); and

(5) meet the examination requirements for the title and type of certificate sought in New York. Currently, a teacher would need to pass the ALST, EAS and the CST to obtain a conditional initial certificate, which is valid for one year, during which time the teacher must pass the edTPA to obtain his/her initial or professional certification, depending on his/her educational level.

Similarly, section 80-5.20 of the Commissioner's regulations currently requires candidates seeking endorsement of a certificate or an equivalent authorization to practice from another state or territory of the U.S. or the District of Columbia for service as a school district leader or school district business leader in New York State to:

(1) hold a valid certificate or equivalent authorization to practice from another state or territory of the U.S. or District of Columbia that is equivalent to the professional certificate as a school district or school district business leader;

(2) meet the general certificate requirements in Subpart 80-1, including requirements relating to citizenship, study in child abuse identification and reporting, school violence prevention and intervention, training in harassment, bullying and discrimination prevention and intervention, and a criminal history check;

(3) hold a master's degree or higher from a regionally accredited higher

education institution or an equivalently approved higher education institution as determined by the Department; and

(4) have had at least three years of satisfactory experience in a public school (grades N-12) in another state or territory of the U.S. or the District of Columbia in a position that would have required the professional certificate in the appropriate title (which must have been completed within ten years immediately preceding the application for endorsement of the out-of-state certificate). For school district leaders only, the candidate must achieve a satisfactory level of performance on the school district leader exam.

Currently, there is no endorsement pathway for school building leaders in Section 80-5.20 of the Commissioner's regulations.

Proposed Amendment:

The proposed amendment would make three significant changes to the current endorsement provisions:

(1) Candidates certified as a school district leader or school district business leader seeking to qualify for certification in New York would be required to have three or more years of experience teaching in the subject area of their valid certificate or acting as a school building leader or school district or school district business leader within the 5 years immediately preceding their application for endorsement; instead of the current requirements which require the three years of experience to be in the last 10 years.

(2) In addition, endorsement candidates would be required to provide satisfactory documentation that he/she received evaluation ratings of effective or highly effective, or the substantial equivalent of such ratings, in his or her three most recent years of experience in a public school.

(3) These certified out-of-state teachers and leaders who have demonstrated effective experience in the certificate title sought would no longer need to take and pass the State certification examinations.

Lastly, a new subdivision would be added to Section 80-5.20 of the Commissioner's regulations to add an endorsement pathway for school building leaders seeking to obtain an initial certificate in this State. The proposed amendment would require candidates seeking endorsement of a certificate or an equivalent authorization to practice from another state or territory of the U.S. or the District of Columbia for service as a school building leader in New York State to:

(1) hold a valid certificate or equivalent authorization to practice from another state or territory of the U.S. or District of Columbia that is equivalent to the initial certificate as a school building leader;

(2) meet the general certificate requirements in Subpart 80-1, including requirements relating to citizenship, study in child abuse identification and reporting, school violence prevention and intervention, training in harassment, bullying and discrimination prevention and intervention, and a criminal history check;

(3) hold a master's degree or higher from a regionally accredited higher education institution or an equivalently approved higher education institution as determined by the Department;

(4) have had at least three years of satisfactory experience in a public school (grades N-12) in another state or territory of the U.S. or the District of Columbia in a position that would have required the professional certificate in the appropriate title (which must have been completed within five years immediately preceding the application for endorsement of the out-of-state certificate); and

(5) provide satisfactory documentation that the candidate received evaluation ratings of effective or highly effective, or the substantial equivalent of such ratings, in his or her three most recent years of experience in a public school.

4. COSTS:

a. Costs to State government: The amendment 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 amendment does not impose any costs on local government, including school districts and BOCES, beyond those costs imposed by the statute.

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

6. PAPERWORK:

The amendment requires that those seeking endorsement of an out-of-state certificate in the title of teacher, school district leader, school district business leader, or school building leader without taking the required certification examinations to submit satisfactory documentation that he/she has three or more years of experience teaching in the subject area of their valid certificate or acting as a school building leader or school district or school district business leader within the 5 years immediately preceding

their application for endorsement; instead of the current requirements which require the three years of experience to be in the last 10 years; and satisfactory documentation that he/she received evaluation ratings of effective or highly effective, or the substantial equivalent of such ratings, in his or her three most recent years of experience in a public school.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

The amendments seek to provide an alternative for those certificate holders seeking endorsement of an out-of-state certificate to gain New York certification if they have the required three years of experience in the title sought as well as provide documentation of satisfactory evaluation ratings, to bypass the State certification exams. The alternative to this amendment already exists—those seeking endorsement of an out-of-state certificate without three years of experience in their certificate title and satisfactory evaluations may pursue endorsement through the current pathways described in Needs and Benefits (section 3). There are no additional alternatives to the proposed amendment.

9. FEDERAL STANDARDS:

There are no applicable Federal standards directly relating to the endorsement of out-of-state certificates for service as a teacher, school district leader, school district business leader and school building leader.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted by the Board of Regents at its July 2016 meeting. If adopted at the July 2016 meeting, the proposed amendment would become effective on July 27, 2016.

### *Regulatory Flexibility Analysis*

(a) Small businesses:

The purpose of the proposed amendment is to provide an alternative pathway for endorsement of out-of-state certificates for service as a teacher, school district leader, school district business leader and school building leader in New York State without taking the State certification exams if they meet certain requirements, including three years of satisfactory experience in a public school outside this State with effective or higher evaluation ratings. The proposed amendment also adds a new subdivision to section 80-5.20 of the Regulations to add an endorsement pathway for school building leaders seeking to obtain an initial certificate in this State. 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 purpose of the proposed amendment is to provide an alternative pathway for endorsement of out-of-state certificates for service as a teacher, school district leader, school district business leader and school building leader in public school in New York State without taking the State certification exams if they meet certain requirements, including three years of satisfactory experience in a public school outside this State with effective or higher evaluation ratings. The proposed amendment also adds a new subdivision to section 80-5.20 of the Regulations to add an endorsement pathway for school building leaders seeking to obtain an initial certificate in this State to be employed in the public schools of this state.

2. COMPLIANCE REQUIREMENTS:

Section 80-5.8 of the Commissioner's regulations currently requires candidates seeking endorsement of a certificate or an equivalent authorization to practice from another state or territory of the U.S. or the District of Columbia for service as a teacher in the classroom teaching service in New York to:

(1) hold a valid teaching certificate or equivalent authorization to practice from another state or territory of the U.S. or District of Columbia;

(2) meet the general certificate requirements in Subpart 80-1, including requirements relating to citizenship, study in child abuse identification and reporting, school violence prevention and intervention, training in harassment, bullying and discrimination prevention and intervention, and a criminal history check;

(3) have at least three years of satisfactory experience in a public school in another state or territory of the U.S. or District of Columbia in a position that would have required an initial or professional certificate (which must have been completed within five years immediately preceding application for endorsement of the out-of-state certificate) or the equivalent of this experience as determined by the Commissioner;

(4) hold a baccalaureate or higher degree from a regionally accredited institution or a higher education institution that the commissioner deems the substantial equivalent (with a minimum cumulative GPA of 2.5); and

(5) meet the examination requirements for the title and type of certificate sought in New York. Currently, a teacher would need to pass the ALST, EAS and the CST to obtain a conditional initial certificate, which is valid for one year, during which time the teacher must pass the edTPA

to obtain his/her initial or professional certification, depending on his/her educational level.

Similarly, section 80-5.20 of the Commissioner's regulations currently requires candidates seeking endorsement of a certificate or an equivalent authorization to practice from another state or territory of the U.S. or the District of Columbia for service as a school district leader or school district business leader in New York State to:

(1) hold a valid certificate or equivalent authorization to practice from another state or territory of the U.S. or District of Columbia that is equivalent to the professional certificate as a school district or school district business leader;

(2) meet the general certificate requirements in Subpart 80-1, including requirements relating to citizenship, study in child abuse identification and reporting, school violence prevention and intervention, training in harassment, bullying and discrimination prevention and intervention, and a criminal history check;

(3) hold a master's degree or higher from a regionally accredited higher education institution or an equivalently approved higher education institution as determined by the Department; and

(4) have had at least three years of satisfactory experience in a public school (grades N-12) in another state or territory of the U.S. or the District of Columbia in a position that would have required the professional certificate in the appropriate title (which must have been completed within ten years immediately preceding the application for endorsement of the out-of-state certificate). For school district leaders only, the candidate must achieve a satisfactory level of performance on the school district leader exam.

Currently, there is no endorsement pathway for school building leaders in Section 80-5.20 of the Commissioner's regulations.

Proposed Amendment:

The proposed amendment would make three significant changes to the current endorsement provisions:

(1) Candidates certified as a school district leader or school district business leader seeking to qualify for certification in New York would be required to have three or more years of experience teaching in the subject area of their valid certificate or acting as a school building leader or school district or school district business leader within the 5 years immediately preceding their application for endorsement; instead of the current requirements which require the three years of experience to be in the last 10 years.

(2) In addition, endorsement candidates would be required to provide satisfactory documentation that he/she received evaluation ratings of effective or highly effective, or the substantial equivalent of such ratings, in his or her three most recent years of experience in a public school.

(3) These certified out-of-state teachers and leaders who have demonstrated effective experience in the certificate title sought would no longer need to take and pass the State certification examinations.

Lastly, a new subdivision would be added to Section 80-5.20 of the Commissioner's regulations to add an endorsement pathway for school building leaders seeking to obtain an initial certificate in this State. The proposed amendment would require candidates seeking endorsement of a certificate or an equivalent authorization to practice from another state or territory of the U.S. or the District of Columbia for service as a school building leader in New York State to:

(1) hold a valid certificate or equivalent authorization to practice from another state or territory of the U.S. or District of Columbia that is equivalent to the initial certificate as a school building leader;

(2) meet the general certificate requirements in Subpart 80-1, including requirements relating to citizenship, study in child abuse identification and reporting, school violence prevention and intervention, training in harassment, bullying and discrimination prevention and intervention, and a criminal history check;

(3) hold a master's degree or higher from a regionally accredited higher education institution or an equivalently approved higher education institution as determined by the Department;

(4) have had at least three years of satisfactory experience in a public school (grades N-12) in another state or territory of the U.S. or the District of Columbia in a position that would have required the professional certificate in the appropriate title (which must have been completed within five years immediately preceding the application for endorsement of the out-of-state certificate); and

(5) provide satisfactory documentation that the candidate received evaluation ratings of effective or highly effective, or the substantial equivalent of such ratings, in his or her three most recent years of experience in a public school.

### 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.

### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on those seeking endorsement of out-of-state certificates for service as a teacher, school district leader, school district business leader and school building leader.

### 6. MINIMIZING ADVERSE IMPACT:

The amendments seek to provide an alternative for those certificate holders seeking endorsement of an out-of-state certificate to gain New York certification if they have the required three years of experience in the title sought as well as provide documentation of satisfactory evaluation ratings, to bypass the State certification exams. The alternative to this amendment already exists—those seeking endorsement of an out-of-state certificate without three years of experience in their certificate title and satisfactory evaluations may pursue endorsement through the current pathways described in Needs and Benefits (section 3). There are no additional alternatives to the proposed amendment.

### 7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the rule have been provided to Superintendents and District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment.

### Rural Area Flexibility Analysis

#### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all out-of-state candidates seeking endorsement of their out-of-state certificate in New York for employment in the public schools of this 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:

Section 80-5.8 of the Commissioner's regulations currently requires candidates seeking endorsement of a certificate or an equivalent authorization to practice from another state or territory of the U.S. or the District of Columbia for service as a teacher in the classroom teaching service in New York to:

(1) hold a valid teaching certificate or equivalent authorization to practice from another state or territory of the U.S. or District of Columbia;

(2) meet the general certificate requirements in Subpart 80-1, including requirements relating to citizenship, study in child abuse identification and reporting, school violence prevention and intervention, training in harassment, bullying and discrimination prevention and intervention, and a criminal history check;

(3) have at least three years of satisfactory experience in a public school in another state or territory of the U.S. or District of Columbia in a position that would have required an initial or professional certificate (which must have been completed within five years immediately preceding application for endorsement of the out-of-state certificate) or the equivalent of this experience as determined by the Commissioner;

(4) hold a baccalaureate or higher degree from a regionally accredited institution or a higher education institution that the commissioner deems the substantial equivalent (with a minimum cumulative GPA of 2.5); and

(5) meet the examination requirements for the title and type of certificate sought in New York. Currently, a teacher would need to pass the ALST, EAS and the CST to obtain a conditional initial certificate, which is valid for one year, during which time the teacher must pass the eTPA to obtain his/her initial or professional certification, depending on his/her educational level.

Similarly, section 80-5.20 of the Commissioner's regulations currently requires candidates seeking endorsement of a certificate or an equivalent authorization to practice from another state or territory of the U.S. or the District of Columbia for service as a school district leader or school district business leader in New York State to:

(1) hold a valid certificate or equivalent authorization to practice from another state or territory of the U.S. or District of Columbia that is equivalent to the professional certificate as a school district or school district business leader;

(2) meet the general certificate requirements in Subpart 80-1, including requirements relating to citizenship, study in child abuse identification and reporting, school violence prevention and intervention, training in harassment, bullying and discrimination prevention and intervention, and a criminal history check;

(3) hold a master's degree or higher from a regionally accredited higher education institution or an equivalently approved higher education institution as determined by the Department; and

(4) have had at least three years of satisfactory experience in a public school (grades N-12) in another state or territory of the U.S. or the District of Columbia in a position that would have required the professional certificate in the appropriate title (which must have been completed within ten years immediately preceding the application for endorsement of the out-of-state certificate). For school district leaders only, the candidate must achieve a satisfactory level of performance on the school district leader exam.

Currently, there is no endorsement pathway for school building leaders in Section 80-5.20 of the Commissioner’s regulations.

Proposed Amendment:

The proposed amendment would make three significant changes to the current endorsement provisions:

(1) Candidates certified as a school district leader or school district business leader seeking to qualify for certification in New York would be required to have three or more years of experience teaching in the subject area of their valid certificate or acting as a school building leader or school district or school district business leader within the 5 years immediately preceding their application for endorsement; instead of the current requirements which require the three years of experience to be in the last 10 years.

(2) In addition, endorsement candidates would be required to provide satisfactory documentation that he/she received evaluation ratings of effective or highly effective, or the substantial equivalent of such ratings, in his or her three most recent years of experience in a public school.

(3) These certified out-of-state teachers and leaders who have demonstrated effective experience in the certificate title sought would no longer need to take and pass the State certification examinations.

Lastly, a new subdivision would be added to Section 80-5.20 of the Commissioner’s regulations to add an endorsement pathway for school building leaders seeking to obtain an initial certificate in this State. The proposed amendment would require candidates seeking endorsement of a certificate or an equivalent authorization to practice from another state or territory of the U.S. or the District of Columbia for service as a school building leader in New York State to:

(1) hold a valid certificate or equivalent authorization to practice from another state or territory of the U.S. or District of Columbia that is equivalent to the initial certificate as a school building leader;

(2) meet the general certificate requirements in Subpart 80-1, including requirements relating to citizenship, study in child abuse identification and reporting, school violence prevention and intervention, training in harassment, bullying and discrimination prevention and intervention, and a criminal history check;

(3) hold a master’s degree or higher from a regionally accredited higher education institution or an equivalently approved higher education institution as determined by the Department;

(4) have had at least three years of satisfactory experience in a public school (grades N-12) in another state or territory of the U.S. or the District of Columbia in a position that would have required the professional certificate in the appropriate title (which must have been completed within five years immediately preceding the application for endorsement of the out-of-state certificate); and

(5) provide satisfactory documentation that the candidate received evaluation ratings of effective or highly effective, or the substantial equivalent of such ratings, in his or her three most recent years of experience in a public school.

No professional services are needed to comply with the proposed amendment.

3. COSTS:

The proposed amendment does not impose any costs on State government or local governments, including those located in rural areas of the State, beyond those imposed by statute.

4. MINIMIZING ADVERSE IMPACT:

The purpose of the proposed amendments is to provide an alternative pathway for endorsement of out-of-state certificates for service as a teacher, school district leader, school district business leader and school building leader in New York State for those who have had at least three years of experience in the certificate title as well as provide documentation of satisfactory evaluation ratings. The pathway would allow those who qualify to bypass the State certification exams if they meet the requirements. The proposed amendment also adds a new subdivision to section 80-5.20 of the Regulations to add an endorsement pathway for school building leaders seeking to obtain an initial certificate in this State. The proposed rule also retains the current endorsement pathways for these certificate titles as well. The statute does not establish differing compliance or reporting requirements for certificate holders seeking endorsement of out-of-state certificates in rural areas.

5. RURAL AREA PARTICIPATION:

The Department has sent a copy of the proposed amendment to the Rural Advisory Committee for comment.

**Job Impact Statement**

The purpose of the proposed amendment is to provide an alternative pathway for endorsement of out-of-state certificates for service as a teacher, school district leader, school district business leader and school building leader in New York State without taking the State certification exams if they meet certain requirements, including three years of satisfactory experience in a public school outside this State with effective or higher evaluation ratings. The proposed amendment also adds a new

subdivision to section 80-5.20 of the Regulations to add an endorsement pathway for school building leaders seeking to obtain an initial certificate in this State. Because the proposed 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.

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## Department of Financial Services

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### EMERGENCY RULE MAKING

#### Standard Financial Aid Award Information Sheet for Institutions of Higher Education

**I.D. No.** DFS-03-16-00003-E

**Filing No.** 414

**Filing Date:** 2016-04-15

**Effective Date:** 2016-04-15

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

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

**Statutory authority:** Banking Law, section 9-w

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

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

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

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

**Text of emergency rule:** PART 421

FINANCIAL AID AWARD INFORMATION SHEET

§ 421.1 Scope and application of this Part

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

§ 421.2 Definitions

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

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

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

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

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

(a) In responding to an incoming or prospective undergraduate

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

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

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

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

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-03-16-00003-EP, Issue of January 20, 2016. The emergency rule will expire June 13, 2016.

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

#### Regulatory Impact Statement

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

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

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

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

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

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

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

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

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

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

#### Regulatory Flexibility Analysis

The rule will not impose any new adverse economic impact or reporting, record keeping or other compliance requirements on small businesses and

local governments. The rule implements Banking Law § 9-w. Some of the covered educational institutions may be small businesses. Any costs or compliance requirements were created statutorily by the Legislature and this rule does not create any additional costs or requirements.

#### Rural Area Flexibility Analysis

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

#### Job Impact Statement

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

#### Assessment of Public Comment

The following is a summary of comments the Department received regarding proposed rule 3 NYCRR 421. The comments are from New York universities as well as associations representing New York colleges and universities.

Some comments objected to the state adopting a uniform information sheet. They pointed out that undergraduate, graduate and other types of higher education are structured differently and information relevant to one audience is not necessarily relevant to another. For example, some types of financial aid on the proposed form are only available to undergraduate students.

Commenters suggested limiting the required recipients of the Financial Aid Information Sheet. Recommendations included limiting recipients to undergraduate students or to admitted students, instead of all financial aid applicants.

Comments requested that schools using the federal Student Shopping Sheet should not be required to adopt any changes to their financial aid award letters. They believe using the federal form should be sufficient to meet their requirements under Banking Law Section 9-w.

Commenters asked for assistance in automating any required forms including encouraging education software vendors to incorporate the required form into their software so schools do not need to develop their own systems.

Finally, some commenters suggested that including estimates of the cost of attendance for all years needed to obtain a degree, instead of the cost of one year, will alarm students and families regarding the cost of their education.

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## Department of Health

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### NOTICE OF ADOPTION

#### Home Care Agencies to Obtain Written Medical Orders from Physicians

**I.D. No.** HLT-06-16-00001-A

**Filing No.** 419

**Filing Date:** 2016-04-19

**Effective Date:** 2016-05-04

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

**Action taken:** Amendment of sections 763.7 and 766.4 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 3612(5) and 3612(7)(a)

**Subject:** Home Care Agencies to Obtain Written Medical Orders from Physicians.

**Purpose:** Amend the clinical records rules for CHHAs and LHCSAs with regard to obtaining signed physician orders.

**Text or summary was published in** the February 10, 2016 issue of the Register, I.D. No. HLT-06-16-00001-P.

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

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

**Assessment of Public Comment**

The Department received three comments during the public comment period. The comments were received from: Healthcare Association of New York State (HANYs), Leading Age New York, and the Home Care Association of New York (HCA).

The comments received were all in support of extending the current thirty (30) day to twelve (12) months timeframe for obtaining written authorization for medical orders for Licensed Home Care Services Agencies, Certified Home Health Agencies, and Long Term Home Health Care Programs.

## Long Island Power Authority

### NOTICE OF ADOPTION

**Dynamic Load Management Programs Including Direct Load Control, Peak Shaving, and Contingency Load Relief**

**I.D. No.** LPA-02-16-00014-A

**Filing Date:** 2016-04-14

**Effective Date:** 2016-04-14

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

**Action taken:** The Long Island Power Authority (“LIPA”) adopted a proposal to modify its Tariff for Electric Service (“Tariff”) to establish dynamic load management programs consistent with tariff revisions approved by the New York PSC for the regulated utilities.

**Statutory authority:** Public Authorities Law, section 1020-f(z), (u) and (gg)

**Subject:** Dynamic load management programs including direct load control, peak shaving, and contingency load relief.

**Purpose:** To establish dynamic load management programs consistent with tariff revisions approved by the PSC for the regulated utilities.

**Text or summary was published** in the January 13, 2016 issue of the Register, I.D. No. LPA-02-16-00014-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Justin Bell, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: jbell@lipower.org

**Revised Regulatory Impact Statement**

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Revised Regulatory Flexibility Analysis**

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Revised Rural Area Flexibility Analysis**

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Revised Job Impact Statement**

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Assessment of Public Comment**

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

### NOTICE OF ADOPTION

**Community Distributed Generation Net Metering, Remote Net Metering, and Size Limits for Fuel Cells**

**I.D. No.** LPA-02-16-00015-A

**Filing Date:** 2016-04-14

**Effective Date:** 2016-04-14

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

**Action taken:** The Long Island Power Authority (“LIPA”) adopted a proposal to modify its Tariff for Electric Service to authorize community distributed generation net metering and to modify provisions regarding remote net metering and size limits for fuel cells.

**Statutory authority:** Public Authorities Law, section 1020-f(z), (u) and (gg)

**Subject:** Community distributed generation net metering, remote net metering, and size limits for fuel cells.

**Purpose:** To authorize community distributed generation net metering and to modify provisions for remote net metering and fuel cells.

**Text or summary was published** in the January 13, 2016 issue of the Register, I.D. No. LPA-02-16-00015-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Justin Bell, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: jbell@lipower.org

**Revised Regulatory Impact Statement**

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Revised Regulatory Flexibility Analysis**

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Revised Rural Area Flexibility Analysis**

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Revised Job Impact Statement**

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

**Assessment of Public Comment**

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

## Office of Mental Health

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

**Incident Management, Criminal History Record Checks, Operation of Psychiatric Inpatient Units General Hospitals, RTFs, and CPEPs**

**I.D. No.** OMH-18-16-00003-P

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

**Proposed Action:** This is a consensus rule making to amend Parts 524, 550, 580, 584 and 590 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.07, 7.09, 31.35, 33.03, 33.04; Executive Law, sections 556 and 557; L. 2012, ch. 501

**Subject:** Incident Management, Criminal History Record Checks, Operation of Psychiatric Inpatient Units General Hospitals, RTFs, and CPEPs.

**Purpose:** To update existing regulations and conform to non-discretionary statutory provisions.

**Substance of proposed rule (Full text is posted at the following State website: [www.omh.ny.gov](http://www.omh.ny.gov)):** This rule making amends several Parts within Title 14 NYCRR, specifically: Part 524 – Incident Management Programs; Part 550 – Criminal History Record Checks; Part 580 Operation of Psychiatric Inpatient Units of General Hospitals; Part 584 – Operation of Residential Treatment Facilities for Children and Youth; and Part 590 – Operation of Comprehensive Psychiatric Emergency Programs. The intent of the proposal is to update existing regulations to conform to non-discretionary statutory provisions with respect to Chapter 501 of the Laws of 2012 (which created the Justice Center for the Protection of Persons with Special Needs) and the promulgation of the Health Insurance

Portability and Accountability Act (HIPAA) in 2003. In addition, OMH recently updated its regulations regarding restraint and seclusion in 14 NYCRR Part 526; this rule updates other OMH regulations accordingly.

Specifically, the amendments are as follows:

- Part 524 – Incident Management Programs: Updates statutory authority and legal base.

- Part 550 – Criminal History Record Checks: Updates background and intent.

- Part 580 – Operation of Psychiatric Inpatient Units of General Hospitals: Eliminates outdated definitions; adds updated procedures for the proper reporting of suspected child abuse or maltreatment by a guardian, caretaker, or other person over the age of 18 who is responsible for the care of the child.

- Part 584 – Operation of Residential Treatment Facilities for Children and Youth: Eliminates outdated definitions; updates definitions of “restraint”, “seclusion” and “time out”; clarifies requirements with respect to criminal history record checks and incident reporting requirements; adds references pertaining to case records of residents; corrects an inaccurate reference and minor typographical error.

- Part 590 – Operation of Comprehensive Psychiatric Emergency Programs: Updates definitions of “restraint” and “seclusion”; adds references with respect to retention of patient records; repeals out-of-date provisions regarding designation of comprehensive psychiatric emergency programs.

The entire text of the proposed rule is available on the OMH website at: [http://www.omh.ny.gov/omhweb/policy\\_and\\_regulations/](http://www.omh.ny.gov/omhweb/policy_and_regulations/)

**Text of proposed rule and any required statements and analyses may be obtained from:** Kim Breen, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: [regs@omh.ny.gov](mailto:regs@omh.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 rule making amends several Parts within Title 14 NYCRR, specifically: Part 524 – Incident Management Programs; Part 550 – Criminal History Record Checks; Part 580 Operation of Psychiatric Inpatient Units of General Hospitals; Part 584 – Operation of Residential Treatment Facilities for Children and Youth; and Part 590 – Operation of Comprehensive Psychiatric Emergency Programs. This purpose of this proposal is to make updates that are necessary as a result of the passage of Chapter 501 of the Laws of 2012 (which created the Justice Center for the Protection of Persons with Special Needs), the promulgation of the Health Insurance Portability and Accountability Act (HIPAA) in 2003, and to reflect the Office of Mental Health’s updated restraint and seclusion regulations in 14 NYCRR Part 526. This proposal is being filed as a consensus rule on the grounds that it is non-controversial and conforms OMH regulations to non-discretionary statutory provisions.

**Statutory Authority:** Section 7.07 of the Mental Hygiene Law charges OMH with the responsibility for assuring the development of comprehensive plans, programs and services in the areas of research, prevention, care, treatment, rehabilitation, education and training of persons with mental illness. Such section further charges OMH with the responsibility for seeing that persons with mental illness are provided with care and treatment, that such care and treatment is of high quality and effectiveness, and that the personal and civil rights of persons receiving care, treatment and rehabilitation are adequately protected. Section 7.09 of the Mental Hygiene Law grants the Commissioner of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction and set standards of quality of care. Section 31.35 of the Mental Hygiene Law imposes the requirement of criminal history background check on each prospective operator, employee, or volunteer of certain mental health treatment providers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such providers. Section 33.03 of the Mental Hygiene Law authorizes the Commissioner to promulgate regulations governing the quality of care and treatment. Section 33.04 of the Mental Hygiene Law establishes requirements for the application of restraint in facilities under the jurisdiction of OMH. Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs. Section 556 of the Executive Law provides the Justice Center the authority to make recommendations of preventive and remedial actions to OMH in response to investigations or allegations of abuse or neglect involving patients. Section 557 of the Executive Law requires that directors of State-operated facilities and directors of licensed programs report deaths of individuals in their care and any allegations of abuse or neglect to the Justice Center.

#### Job Impact Statement

A Job Impact Statement for these amendments is not being submitted with this rule making as it is apparent from the nature and purpose of the rule

that there will be no impact on jobs and employment opportunities. The proposal serves to make regulatory updates that are necessary as a result of the passage of Chapter 501 of the Laws of 2012 (which created the Justice Center for the Protection of Persons with Special Needs), the promulgation of HIPAA in 2003, and to reflect the Office of Mental Health’s updated restraint and seclusion regulations in 14 NYCRR Part 526.

## Department of Motor Vehicles

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

#### Relicensing After Revocation Pursuant to a Fatal Accident Hearing

**I.D. No.** MTV-18-16-00001-P

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

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

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

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

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

**Text of proposed rule:** A new subdivision (d) is added to section 136.4, subdivisions (d) and (e) are renumbered as (e) and (f), and subdivision (f) is amended to read as follows:

(d) *An application for a driver’s license may be denied if the applicant is currently revoked pursuant to:*

(1) *a determination of a department of motor vehicles’ administrative law judge following a hearing:*

(i) *to investigate a fatal accident, or*

(ii) *held under Article 2-A of the vehicle and traffic law where the applicant was convicted of a violation and such violation resulted in the death of, or serious physical injury to, a person other than the applicant.*

(2) *a judgment of conviction certified by a court of competent jurisdiction, where the violation resulted in the death of, or serious injury to, a person other than the applicant.*

[(d)] (e) In any situation in which the commissioner would propose to deny an application pursuant to the provisions of this section, the grounds for the proposed denial shall be sent to the applicant, who shall be provided with an opportunity to respond. The applicant’s response shall be considered before a determination is made. Failure to respond within the period specified by the commissioner shall result in denial of the application.

[(e)] (f) While it is the Commissioner’s general policy to deny an application based on those elements cited in subdivisions (a), (b), [(and)] (c) and (d) of this section, the commissioner shall not be foreclosed from consideration of unusual, extenuating or compelling circumstances which may be presented for review, which form a valid basis to deviate from the general policy, as set forth above, in the exercise of the discretionary authority granted under section 510 of the Vehicle and Traffic Law. If an application is approved based upon the exercise of such discretionary authority, the reasons for approval shall be stated in writing and recorded. If an application is approved under such circumstances, the Commissioner may impose a problem driver restriction on such person’s license or permit for a period of three years, as set forth in section 3.2(c)(4) of this Title, and may require the installation of an ignition interlock device in any motor vehicle owned or operated by such person for such three-year period.

Subdivisions (d) and (e) of section 136.5 are amended to read as follows:

(d) While it is the Commissioner’s general policy to act on applications in accordance with this section, the Commissioner shall not be foreclosed from consideration of unusual, extenuating and compelling circumstances that may be presented for review and which may form a valid basis to deviate from the general policy, as set forth above, in the exercise of discretionary authority granted under sections 510 and 1193 of the Vehicle and Traffic Law. If an application is approved based upon the exercise of such discretionary authority, the reasons for approval shall be set forth in writing and recorded. If an approval is granted based upon unusual, extenuating and compelling circumstances, the applicant may be issued a

license or permit with a problem driver restriction, as set forth in section 3.2(c)(4) of this Title, *and may be required to install an ignition interlock device in any motor vehicle owned or operated by such person for a period of five years.* The provisions of this subdivision shall not apply to denials under paragraph (6) of subdivision (b) of this section.

(e) If there are two alcohol or drug-related driving convictions or incidents on an applicant's driving record, the consideration of an application for relicensure shall be held in abeyance if the applicant has at least one ticket pending for alcohol or drug-related driving offenses where the pending ticket or tickets, if disposed of as a conviction of the original charge, would result in the denial of the application. In addition, if, after an application for relicensure is approved, the Commissioner receives information that indicates that such application should have been denied or *that the applicant operated a motor vehicle prior to approval or after approval of such application but prior to obtaining a valid permit or license,* the Commissioner shall rescind such approval and the license or privilege granted shall be revoked.

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

**Data, views or arguments may be submitted to:** Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: ida.traschen@dmv.ny.gov

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

#### **Regulatory Impact Statement**

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles (Commissioner) may enact rules and regulations that regulate and control the exercise of the powers of the Department of Motor Vehicles (Department). VTL section 501(2)(c) authorizes the Commissioner to provide for driver's license restrictions based upon the types of vehicles or other factors deemed appropriate by the Commissioner. VTL section 510(6)(g) provides that where revocation is permissible, no new license shall be issued by the Commissioner to any person until after 30 days from the date of such revocation, nor thereafter, except in the discretion of the Commissioner.

2. Legislative objectives: The Legislature has granted the Commissioner significant authority to establish standards for relicensure after revocation, in order to ensure that high risk motorists are not allowed to operate on our State's highways. When a motorist's license is revoked, the Legislature has vested the Commissioner with the authority to relicense such motorist only if he or she does not pose a risk to the motoring public.

In accordance with the objective of protecting the motoring public, this proposal authorizes the Commissioner to deny relicensure after revocation if such revocation is the result of either a fatal accident hearing conducted by a Department of Motor Vehicles' Administrative Law Judge (ALJ) or a conviction in a Traffic Violations Bureau or court of competent jurisdiction, where such conviction arises out of a fatal accident.

3. Needs and benefits: A person whose driver's license is revoked must apply to the Department for relicensure. Such person's driving record is subject to a review pursuant to Part 136. The Department reviews the applicant's entire driving history in order to assess his or her risk to the motoring public.

This proposed rulemaking authorizes the Commissioner to deny relicensure after revocation if such revocation is the result of a fatal accident hearing conducted by a Department of Motor Vehicles' Administrative Law Judge (ALJ) or a conviction in a Traffic Violations Bureau (TVB) or court of competent jurisdiction, where such conviction arises out of a fatal accident.

Pursuant to VTL section 510(3), the DMV is authorized to conduct administrative hearings to investigate whether a person involved in a fatal accident violated the VTL and/or committed gross negligence in the operation of a motor vehicle, and/or operated a motor vehicle in a manner showing reckless disregard for life or property of another. An ALJ takes testimony from the motorist, the police officer or officers and any witnesses, and receives relevant exhibits into evidence. Following the hearing, the ALJ may permissively suspend or revoke the motorist's license, i.e., such action is not mandated by law. If the ALJ revokes the motorist's license, the motorist may reapply for a license after 30 days, pursuant to VTL section 510(6)(g).

Pursuant to Article 2-A of the VTL, the Department also conducts administrative hearings in the nine TVBs across the State, where the ALJ adjudicates most traffic infractions. Similarly, in courts of competent jurisdiction across the state, traffic infractions are adjudicated. If the person is convicted of a violation of right of way offense contained in Article 26 of the VTL and such violation resulted in death or serious physical injury to another person, there are mandatory license sanctions. (See VTL 510(2)). In addition, if a person is convicted of any VTL offense or a violation of a

local law and such violation resulted in death or serious physical injury, the ALJ or judge may permissively suspend or revoke such person's license, pursuant to VTL section 510(3)(a). As noted, if the ALJ or judge permissively revokes the motorist's license, the motorist may reapply for a license after 30 days, pursuant to VTL section 510(6)(g).

Currently, the Commissioner has limited authority to deny relicensure if the motorist's record indicates that other than the revocation arising out of the fatal accident hearing, his or her driving record is relatively unblemished. Consequently, such motorist could be relicensed after 30 days. This proposed rulemaking would authorize the Commissioner to deny relicensure in such a situation. Such motorists have committed a violation of the law resulting in another person's death. It is simply unacceptable to permit such person to regain driving privileges after 30 days.

The proposed rule makes other revisions to Part 136. Section 136.4(e) is renumbered as 136.4(f) to provide that if an applicant is denied relicensure due to a revocation arising out of a fatal accident, the Commissioner may consider unusual, extenuating and compelling circumstances as a basis to deviate from the general policy to deny an application under such section and the Commissioner may impose the problem driver restriction as a condition of approval of the application. The problem driver restriction limits the motorist's driving privileges and may require the installation of an ignition interlock device in all motor vehicles owned or operated by the motorist.

The proposed rule also makes clear that if an applicant's license is restored due to unusual, extenuating and compelling circumstances, in cases where such applicant has multiple alcohol-related incidents on his or her record, the DMV may require such person to have a problem driver restriction with the interlock requirement for a period of three years or five years, depending on the applicant's driving record.

Finally, section 136.5(e) is amended to provide that if the Commissioner learns that an applicant for relicensure has operated a motor vehicle prior to obtaining a valid permit or license, the Commissioner may rescind approval of the application.

On September 25, 2012 and on February 11, 2015, the DMV adopted regulations to deny relicensure to persons with multiple alcohol-related convictions and incidents on their records. This proposed rule is an additional measure to keep dangerous drivers off of our State's highways.

#### 4. Costs:

a. Cost to regulated parties and customers: Motorists who are granted a license due to compelling, extenuating and unusual circumstances may be required to install and maintain an ignition interlock device in vehicles that they own or operate. There are various models of available interlock devices. The average cost of installation and monthly maintenance is slightly over \$1,000 a year.

b. Costs to the agency and local governments: There is no cost to the agency or to local governments.

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

5. Local government mandates: There are no local government mandates.

6. Paperwork: There are no paperwork requirements.

7. Duplication: This proposed rulemaking does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: The Department deliberated about how to address applicants whose licenses are revoked as the result of a fatal accident hearing and apply for relicensure after 30 days. This proposed rulemaking represents a necessary step to keep dangerous drivers off of the State's highways. A no action alternative was not considered.

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

10. Compliance schedule: The Department and its regulated parties will be able to achieve compliance with the proposed rulemaking upon its Notice of Adoption in the State Register.

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

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

This proposal sets forth criteria for relicensing after revocation. Due to its narrow focus, this rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

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

**Drivers License Endorsements**

**I.D. No.** MTV-18-16-00002-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 section 3.2 of Title 15 NYCRR.

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

**Subject:** Drivers License Endorsements.

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

**Text of proposed rule:** Paragraph (1) of subdivision (b) of section 3.2 is amended to read as follows:

(1) Statutory endorsements. The endorsements established in statute are T, N, P, X, H, S, W, *covered farm vehicle*, and personal use vehicle endorsements. A *covered farm vehicle* endorsement or a personal use vehicle endorsement shall only be added to a license which is not a CDL. T, N, P, X, S or H endorsement shall only be added to a CDL. A W endorsement may be added to a CDL license or to a license that is not a CDL.

Subparagraphs (i) and (ii) of paragraph (1), of subdivision (b) of section 3.2 are amended to read as follows:

(i) CDL endorsements. A P endorsement which is needed to operate a bus or *any motor vehicle with a gross vehicle weight or gross vehicle weight rating of more than 26,000 pounds which is designed to transport passengers in commerce* requires passage of both a special knowledge test and a skills test in a representative vehicle. An S endorsement which is needed to operate a school bus requires passage of both a special knowledge test and a skills test in a representative vehicle. The holder of an S endorsement must also hold a P endorsement. T, N, H, W or X endorsements which are needed to operate the following vehicles or combinations require only the passage of a knowledge test for each endorsement by the licensee:

(ii) Covered Farm *Vehicle* endorsement. There are [three] *two* types of *covered farm vehicle* endorsements F[,] and G [and Z]. The F endorsement is required on a non-CDL for operation of *covered farm vehicles and covered farm vehicle combinations over 26,000 lbs.* The G endorsement is required on a non-CDL for operation of single *covered farm vehicles over 26,000 lbs.* [The Z endorsement is required on a non-CDL for transporting hazardous materials in a farm vehicle.] All of the *covered farm vehicle* endorsements are limited to operation of the *covered farm vehicle* or combinations within 150 *air miles of the farm or ranch.* Beyond that distance, an appropriate class CDL is required. *Covered [Farm] farm vehicle* endorsements shall be issued for appropriate class licenses upon passage of an appropriate non-CDL knowledge test and skills test in a representative vehicle [except that a Z endorsement shall be issued only after the applicant also passes the hazardous materials knowledge test which is required for issuance of an H endorsement to a CDL].

Paragraphs 3, 4 and 6 of subdivision (a) of section 3.5 are amended to read as follows:

(3) If a skills test is taken and passed in a truck-trailer combination (truck over 26,000 lbs. GVWR trailer over 10,000 lbs. GVWR) and the CDL general knowledge and combination vehicle tests have been passed, a class A license with truck trailer combination only (O) restriction will be issued. Unless the vehicle was equipped with air brakes and the CDL air brake knowledge test has been passed, an air brake (L) restriction will be placed on the license. If a skills test is taken in a vehicle equipped with air over hydraulic brakes, a Z restriction must be placed on the CDL. Air over hydraulic brakes includes any braking system operating partially on the air brake and partially on the hydraulic brake principle. A *non-commercial class [C] license with a covered farm (F) vehicle* endorsement with a truck trailer combination only (O) restriction will be issued if a CDL general knowledge test has not been passed. A class C license with a personal use vehicle (R) endorsement will be issued if a CDL general knowledge test has not been passed.

(4) If a skills test is taken and passed in a truck-trailer combination (truck up to 26,000 lbs. GVWR trailer over 10,000 lbs. GVWR) and the CDL general knowledge and combination vehicle test have been passed, a class A license with a truck-trailer combination only (truck cannot exceed 26,000 lbs. GVWR) (01) restriction will be issued. Unless the vehicle was equipped with air brakes and the CDL air brake knowledge test has been passed, an air brake (L) restriction will be placed on the license. If a skills test is taken in a vehicle equipped with air over hydraulic brakes, a Z restriction must be placed on the CDL. Air over hydraulic brakes includes

any braking system operating partially on the air brake and partially on the hydraulic brake principle. A *non-commercial class [C] license with a covered farm (F) vehicle* endorsement with a truck-trailer combination only (truck cannot exceed 26,000 lbs. GVWR) (01) restriction will be issued if a CDL general knowledge test has not been passed [and an affidavit of farm operation is submitted]. A class C license with a personal use vehicle (R) endorsement will be issued if a CDL general knowledge test has not been passed [and an affidavit of farm operation is not submitted].

(6) If a skills test is taken and passed in a truck with a GVWR over 26,000 lbs. and the CDL general knowledge test has been passed, a class B license will be issued. Unless the vehicle was equipped with air brakes and the CDL air brake knowledge test has been passed, an air brake (L) restriction will be placed on the license. If a skills test is taken in a vehicle equipped with air over hydraulic brakes, a Z restriction must be placed on the CDL. Air over hydraulic brakes includes any braking system operating partially on the air brake and partially on the hydraulic brake principle. A *non-commercial class [C] license with a covered farm (G) vehicle* endorsement will be issued if a CDL general knowledge test has not been passed. A class C license with a personal use vehicle (R) endorsement will be issued if a CDL general knowledge test has not been passed.

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

**Data, views or arguments may be submitted to:** Ida L. Traschen, Department of Motor Vehicle, 6 Empire State Plaza, Room 522A, Albany, NY 12228, (518) 474-0871, email: ida.traschen@dmv.ny.gov

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

**Consensus Rule Making Determination**

Chapter 58 of the Laws of 2016, effective July 1, 2016, amend section 501-a of the Vehicle and Traffic Law (VTL) to provide for the issuance of a covered farm vehicle (CFV) designation by the Department of Motor Vehicles. The amendments to Part 3.2 of the Commissioner's Regulations simply conform to the amendments set forth in Chapter 58. The amendments to the VTL were required by amendments to federal regulations regarding covered farm vehicles, specifically 49 CFR 383.3, 49 CFR 390.5, 49 CFR 390.39, 49 CFR 391.3, 49 CFR 395.1 and 49 CFR 396.1. Failure to amend the VTL and Part 3.2 of the Commissioner's regulations would jeopardize federal funding for the State's Motor Carrier Safety Assistance Program.

A CFV is a motor vehicle registered in this state which displays a CFV designation, is operated by the owner or operator of a farm or ranch, or its employees or family members, and is used to transport agricultural commodities, livestock, machinery, or supplies to or from a farm or ranch, and is not used for for-hire operation or for the transportation of hazardous materials. The CFV designation, which must be kept in the CFV, provides that the person operating such CFV is exempt from holding a CDL and is also exempt from federal requirements related to medical certification, hours of service, drug testing and inspection/maintenance requirements. Such person is limited to operating within 150 air miles from the farm or ranch.

The person operating a CFV which weighs more than 26,000 pounds must have an F or G endorsement on such person's license, indicating that he or she has passed the appropriate knowledge and skills test, specifically that such person has passed a skills test in a motor vehicle with a gross vehicle weight rating of more than 26,000 pounds. These amendments will not affect persons who are currently exempt from holding a CDL and who have an F or G endorsement. Such persons may retain their F or G endorsement on their non-CDL but they must keep a copy of the CFV designation in their vehicle or vehicle(s) in order to maintain the exemption.

Under the amendments to the federal and state law, a person transporting hazardous materials may not operate a CFV. Such persons must obtain a CDL. Therefore, the Z endorsement is eliminated.

The DMV will issue the CFV designation at no cost to eligible licensees.

The proposed rule also omits references to the affidavit of farm operation, which is obsolete.

Finally, Chapter 58 amended Section 501(2)(b)(iv) of the VTL to provide that a CDL holder must have a P endorsement if such holder operates any motor vehicle with a GVWR of more than 26,000 pounds which is designed to transport passengers in commerce. This regulation makes technical changes to conform to the statutory amendment.

Since these regulations merely conform the Commissioner's Regulations to federal and State requirements, a consensus rulemaking is appropriate.

**Job Impact Statement**

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

## Public Service Commission

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

#### Transfer of Certain Streetlights Located in the City of Beacon

I.D. No. PSC-18-16-00011-P

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

**Proposed Action:** The Commission is considering a petition filed by Central Hudson Gas & Electric Corporation (Central Hudson) for the transfer of certain streetlights located in the City of Beacon, Dutchess County, New York to the City of Beacon.

**Statutory authority:** Public Service Law, sections 65, 66 and 70

**Subject:** Transfer of certain streetlights located in the City of Beacon.

**Purpose:** To consider the transfer of certain streetlights from Central Hudson to the City of Beacon.

**Substance of proposed rule:** The Public Service Commission is considering a petition filed on March 18, 2016 by Central Hudson Gas & Electric Corporation (Central Hudson) regarding approval of the transfer of certain streetlights to the City of Beacon, a New York municipal corporation. Central Hudson asserts that the proposed transaction will not impact the reliability, safety, operation, or maintenance of Central Hudson's electric distribution system. The Commission may adopt, reject, or modify, in whole or in part, the petition request 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, 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-0173SP1)

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

#### Petition for Additional Stock Acquisition

I.D. No. PSC-18-16-00012-P

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

**Proposed Action:** The Commission is considering the petition of Corning Natural Gas Holding Corporation to that would allow shareholders with more than 10 percent of the voting capital stock to purchase additional shares.

**Statutory authority:** Public Service Law, section 70

**Subject:** Petition for additional stock acquisition.

**Purpose:** To consider the petition for additional stock acquisition.

**Substance of proposed rule:** The Public Service Commission is considering a petition by Corning Natural Gas Holding Corporation (Corning) pursuant to Section 70 of the Public Service Law. Corning seeks authority to allow shareholders who own more than 10 percent of Corning's voting capital stock to acquire additional shares through a proportional offering of subscription rights. The Commission may adopt, reject or modify, in whole or in part, the petition request and may resolve related matters.

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

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

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

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

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

(16-G-0200SP1)

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

#### Amendments to the Uniform Business Practices of ESCOs

I.D. No. PSC-18-16-00013-P

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

**Proposed Action:** The Commission is considering amendments to the Uniform Business Practices with respect to eligibility criteria of energy service companies.

**Statutory authority:** Public Service Law, sections 5(1), 65(1), (2), (3), 66(2), (3), (5), (8), (9) and (12)

**Subject:** Amendments to the Uniform Business Practices of ESCOs.

**Purpose:** To ensure consumer protection for ESCO customers.

**Substance of proposed rule:** The New York State Public Service Commission (Commission) is considering amendments to the Uniform Business Practices (UBP) with respect to the criteria for the eligibility of energy service companies (ESCOs). The proposed changes, summarized below, are found partially in a report filed in Case 15-M-0127 by the Staff of the Department of Public Service on July 28, 2015 (Report), and partially in a Notice Seeking Comments on Resetting Retail Energy Markets for Mass Market Customers issued in Cases 15-M-0127, 12-M-0476 and 98-M-1343 on February 23, 2016 (Notice).

The Report proposes the following changes to the UBP:

1. Revisions to the application requirements for ESCOs seeking to gain eligibility including disclosure of decisions or investigations in other states that affect, or may affect, the ESCO's ability to operate, identification of methods by which the Applicant intends to market to customers in New York, and the number of complaints on file with public utility commissions in other states. This information is intended to assist Staff in its review of applications to serve as an ESCO in New York, to ensure that applicants can comply with Commission requirements.

2. New requirements that ESCOs operating in New York have at least three years of experience in both financial risk management practices and customer service. An ESCO may demonstrate such expertise through the use of contractors.

3. A new requirement that ESCOs seeking eligibility should be assessed an application fee.

4. A new requirement to allow for denial of an eligibility application. Pursuant to this modification, simply completing the application alone would not automatically result in approval to operate in New York, as it does now. Instead, Staff may recommend that the Commission deny an entity's application, with good cause shown, such as evidence of poor performance in other jurisdictions founded on decisions or regulatory action in other jurisdictions.

5. New standardized definitions of "fixed price" and "green energy." The proposed definition of fixed price is "all-inclusive prices that will remain the same for the term of the contract." ESCOs who market fixed price products would be required to do so only with products that conform to that definition. The proposed definition of green energy is "electricity from technologies identified by the Commission as RPS [Renewable Portfolio Standard] eligible," and limits use of that term to products conforming to that definition.

6. A new requirement that entities claiming to sell green energy must define to the customer in advance, the specific energy source fuel types of the electricity to be provided that are claimed to constitute the green energy.

7. New requirements that that ESCOs be required to use a standard contract for energy commodity service for residential customers, and that the "combined residential sales agreement" attached to the Report be utilized. These requirements are proposed in order to enable consumers to readily understand and compare contracts for energy commodity service.

8. Development of specific standardized contract language for energy

commodity services on key contract provisions for non-residential customers, including: pricing and early termination fees; consumer protections; and procedures applicable to address disputes.

9. Modifications so that ESCOs deemed eligible to provide commodity service must begin serving customers within two years from the date of Staff's eligibility letter. ESCOs which have not done so would have their eligibility to operate in New York rescinded and would have to reapply. These revisions are proposed to conserve the Staff and utility resources required to ensure compliance with application and other requirements for ESCOs deemed eligible but not serving customers.

10. An amended dispute resolution process to address disputes between ESCOs and utilities. The dispute resolution process now applicable to ESCO-utility disputes would be modified in several respects to enhance efficiency, including by establishing a strict end-date to the process, creating a standard simple form on the agency's website to be used for all informal complaints, and establishing an expedited process to be used for emergencies that would reduce the steps needed to take action.

11. New provisions regarding the oversight of energy brokers to address an increasing number of complaints in which consumers allege that energy brokers provided inaccurate or misleading information concerning ESCO products and services. The proposed modifications would require ESCOs to identify and provide contact information for entities, including energy brokers, which market to customers on behalf of the ESCO, or sell lists of potential customers to the ESCO.

12. Development of a process by which existing ESCOs seeking to maintain their eligibility to operate in New York can complete a Supplemental Application which reflects any new requirements approved by the Commission. Under the proposal, ESCOs would have 90 days after a Commission Order on ESCO Eligibility to submit a completed Supplemental Application to the Department, or file with the Secretary a request for an extension of up to 90 days, including any justification for the additional time. ESCOs not submitting completed applications in the time required would be subject to having their authority to provide service in New York rescinded by the Commission without further process.

The Notice proposes the consideration of the following additional issues related to the UBP:

13. Changes to the to the three-day period for residential customer rescission/cancellation of an agreement with an ESCO.

14. Application of the rescission/cancellation period to small non-residential customers.

15. Whether and under what circumstances ESCOs should be required to post performance bonds or other forms of demonstrated financial capability.

16. Reconsideration of the framework for ESCO oversight under the Public Service Law.

17. What penalties may apply to ESCOs that violate the UBP or other Commission Orders or provisions of the PSL.

The Commission may adopt, reject or modify, in whole or in part, the relief proposed, and may resolve related matters.

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

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

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

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

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

(15-M-0127SP3)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Amendments to the Uniform Business Practices of ESCOs

**I.D. No.** PSC-18-16-00014-P

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

**Proposed Action:** The Commission is considering amendments to the Uniform Business Practices with respect to the circumstances when energy service companies (ESCOs) should be required to post performance bonds or other forms of demonstrated financial capability.

**Statutory authority:** Public Service Law, sections 5(1), 65(1), (2), (3), 66(2), (3), (5), (8), (9) and (12)

**Subject:** Amendments to the Uniform Business Practices of ESCOs.

**Purpose:** To ensure consumer protection for ESCO customers.

**Substance of proposed rule:** The New York State Public Service Commission (PSC) is considering amendments to the Uniform Business Practices (UBP) with respect to whether and the circumstances when ESCOs should be required to post performance bonds or other forms of demonstrated financial capability or financial security; what magnitude is appropriate; and how performance bonds or alternative security should be administered. One purpose of demonstrating financial capability or financial security would be to ensure that ESCOs are capable of fulfilling their obligations to the distribution utility. Another purpose of demonstrating financial capability or financial security would be to ensure that ESCOs fulfill their obligations to their retail customers. The consideration of administration will include, but not be limited to, a consideration of the distribution utility being the administrator/standby trustee of any performance bonds or other forms of demonstrated financial capability or financial security, with compensation for performing that role in the form of a fee or charge payable by ESCOs. Any changes to the UBP would require Commission approval. The PSC may adopt, reject or modify, in whole or in part, the changes proposed, and may resolve related matters.

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

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

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

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

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

(15-M-0127SP5)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Petitions for Rehearing of the Order Resetting Retail Energy Markets and Establishing Further Process

**I.D. No.** PSC-18-16-00015-P

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

**Proposed Action:** The Commission is considering petitions requesting rehearing of the February 23, 2016 Order Resetting Retail Energy Markets and Establishing Further Process submitted by a number of parties on March 24 and March 25, 2016 and supporting documents.

**Statutory authority:** Public Service Law, sections 5(1)(b), (2), 22, 53, 65(1), (2), (3), 66(2) and (5)

**Subject:** Petitions for rehearing of the Order Resetting Retail Energy Markets and Establishing Further Process.

**Purpose:** To ensure consumer protections for ESCO customers.

**Substance of proposed rule:** The Public Service Commission is considering petitions and supporting responses requesting rehearing of the February 23, 2016 Order Resetting Retail Energy Markets and Establishing Further Process in Cases 15-M-0127, 12-M-0476, and 98-M-1343. Petitions requesting rehearing, reconsideration, and/or clarification were filed on March 24 and March 25, 2016 by: National Fuel Gas Distribution Corporation; Direct Energy Services, LLC; Major Energy Services, LLC, Major Energy Electric, LLC and Family Energy, Inc.; the Retail Energy Supply Association, Interstate Gas Supply, Inc. d/b/a IGS Energy, Accent Energy Midwest Gas LLC d/b/a IGS Energy, and Accent Energy Midwest II LLC d/b/a IGS Energy; the Impacted ESCO Coalition; and the National Energy Marketers Association (collectively, Petitioners). In addition, on April 8 and April 11, 2016, several parties submitted comments responding to, supporting, or opposing the petitions for rehearing. All Petitioners request rehearing of the provisions of the Order limiting the products that energy services companies (ESCOs) may offer to customers to guaranteed savings products and electric products including 30% or more renewable energy, as well as the provision requiring ESCO Chief Executive Officers

(CEOs) to certify compliance, reflected in Ordering Clauses 1, 2, and 3. Some of the Petitioners additionally request rehearing on the remainder of the Order, which contains enhancement of the enforcement provisions of the Uniform Business Practices and was effectuated through Ordering Clauses 4 and 5. Grounds for rehearing argued by one or more of the Petitioners include: that the Order failed to comply with the State Administrative Procedure Act (SAPA); that the Order lacked a rational basis or was otherwise arbitrary and capricious; that the Order exceeded the Commission's statutory authority or jurisdiction; that the Order vitiated licenses without complying with due process requirements as described in SAPA; that the Order violated the United States Constitution and the New York State Constitution, including by violating procedural and substantive due process rights, by taking property without compensation, and by interfering with existing contracts; that the Order was promulgated in violation of the State Environmental Quality Review Act (SEQRA); and that the Order was based on errors of fact, including that its description of the current state of the retail energy market was inaccurate, that its assertions that certain types of products did not benefit customers was incorrect, and that it failed to appropriately consider that it would be difficult or impossible for ESCOs to comply with the decisions in the Order. Upon conducting its evaluation of the rehearing petitions, the Commission may reaffirm its initial decision or adhere to it with additional rationale in denying the petitions, modify or reverse the decision in granting the petitions in whole or in part, or take such other or further action as it deems necessary with respect to the petitions. However, the Commission will limit its review to the issues raised by the above-referenced Petitions, as well as responses in support of such Petitions.

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

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

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

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

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

(15-M-0127SP4)

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

**Amendments to the Uniform Business Practices of ESCOs**

**I.D. No.** PSC-18-16-00016-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 amendments to the Uniform Business Practices with respect to use of a forward-looking reference price as the basis for establishing energy service company (ESCO) products at fair prices.

**Statutory authority:** Public Service Law, sections 5(1), 65(1), (2), (3), 66(2), (3), (5), (8), (9) and (12)

**Subject:** Amendments to the Uniform Business Practices of ESCOs.

**Purpose:** To ensure consumer protection for ESCO customers.

**Substance of proposed rule:** The New York State Public Service Commission (PSC) is considering amendments to the Uniform Business Practices (UBP) with respect to the products ESCOs could be allowed to offer residential and small commercial customers. The consideration of products will include, but not be limited to, the use of a forward-looking reference price calculated based on publicly available information as the basis for establishing a fair forward-looking price upon which ESCO products could be built in a manner that would ensure just and reasonable rates for ESCO customers. The reference price could be established based on forward prices for energy and capacity and other related costs. The reference prices may or may not incorporate a risk premium, such as to establish a going-forward fixed-price reference price. The reference prices could be established by commodity, load zone, service territory, and product, or other measure. The reference prices could be calculated by Department of Public Service Staff, or a third party, and could be made available on the Public Service Commission web site, and updated on a monthly or other

periodic basis. Individual ESCO products could include a premium above or discount below the reference price to reflect the additional risks the customer or ESCO would assume for certain products. The Commission is also considering whether for combined commodity and energy-related value-added products, the price of the commodity component should be disclosed to customers along with the total price as a mandatory requirement so that the customer has the information necessary to judge the fair worth of the value-added component. Various ESCO products could possibly be built upon a reference price foundation including, but not limited to: variable-priced commodity products; variable-priced commodity products with an energy-related value-added product, fixed-price commodity products; and fixed-price commodity products with an energy-related value-added product. The Commission may consider what actions will be taken against an ESCO that exceeds the reference price for certain products. Any changes to the UBP would require Commission approval. The PSC may adopt, reject or modify, in whole or in part, the changes proposed, and may resolve related matters.

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

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

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

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

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

(15-M-0127SP6)

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

**Transfer of Certain Streetlights Located in the City of Poughkeepsie**

**I.D. No.** PSC-18-16-00017-P

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

**Proposed Action:** The Commission is considering a petition filed by Central Hudson Gas & Electric Corporation (Central Hudson) for the transfer of certain streetlights located in the City of Poughkeepsie, Dutchess County, New York to the City of Poughkeepsie.

**Statutory authority:** Public Service Law, sections 65, 66 and 70

**Subject:** Transfer of certain streetlights located in the City of Poughkeepsie.

**Purpose:** To consider the transfer of certain streetlights from Central Hudson to the City of Poughkeepsie.

**Substance of proposed rule:** The Public Service Commission is considering a petition filed on March 18, 2016 by Central Hudson Gas & Electric Corporation (Central Hudson) regarding approval of the transfer of certain streetlights to the City of Poughkeepsie, a New York municipal corporation. Central Hudson asserts that the proposed transaction will not impact the reliability, safety, operation, or maintenance of Central Hudson's electric distribution system. The Commission may adopt, reject, or modify, in whole or in part, the petition request 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-0174SP1)

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

**Amendments to the Uniform Business Practices of ESCOs**

I.D. No. PSC-18-16-00018-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 amendments to the Uniform Business Practices with respect to the circumstances when an ESCO must obtain a customer's express consent for a modification to a sales agreement.

**Statutory authority:** Public Service Law, sections 5(1), 65(1), (2), (3), 66(2), (3), (5), (8), (9) and (12)

**Subject:** Amendments to the Uniform Business Practices of ESCOs.

**Purpose:** To ensure consumer protection for ESCO customers.

**Substance of proposed rule:** The New York State Public Service Commission (PSC) is considering amendments to the Uniform Business Practices (UBP) with respect to the circumstances when an ESCO must obtain a customer's express consent for a modification to a sales agreement. The Commission is considering modifying the definition of a "material" change that would require consent, including to what extent regulatory changes affecting products offered affect materiality, and whether changes related to price may in some circumstances be considered material changes. The Commission is also considering alternatives to consent, such as enhanced notice. Any changes to the UBP would require Commission approval. The PSC may adopt, reject or modify, in whole or in part, the changes 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](mailto: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](mailto:secretary@dps.ny.gov)

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

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

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

(15-M-0127SP7)

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## Office of Temporary and Disability Assistance

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### NOTICE OF ADOPTION

**Burden of Proof at Fair Hearings Challenging Interim Assistance Reimbursement (IAR) Amounts**

I.D. No. TDA-45-15-00011-A

Filing No. 409

Filing Date: 2016-04-13

Effective Date: 2016-05-04

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

**Action taken:** Amendment of section 358-5.9(a) of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 17(a)-(b), (i), 20(2)-(3), 22(8), 34 and 95; L. 2012, ch. 41

**Subject:** Burden of proof at fair hearings challenging Interim Assistance Reimbursement (IAR) amounts.

**Purpose:** Clarify existing State regulations relative to fair hearings and render them consistent with New York State court precedents.

**Text or summary was published** in the November 10, 2015 issue of the Register, I.D. No. TDA-45-15-00011-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, NY 12243-0001, (518) 486-7503, email: [richard.rhodesjr@otda.ny.gov](mailto:richard.rhodesjr@otda.ny.gov)

**Initial Review of Rule**

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

**Assessment of Public Comment**

The Office of Temporary and Disability Assistance (OTDA) received comments relative to the regulatory amendments. These comments have been reviewed and duly considered in this Assessment of Public Comments.

Two comments requested that OTDA amend 18 NYCRR § 358-5.9(a)(2)(i) to expand the social services agency's burden of proving that its actions were correct regarding "any recovery from the initial payment of supplemental security income as reimbursement of public assistance, including but not limited to validity of an interim assistance reimbursement (IAR) authorization, the source of funding or the amount deducted" (emphasis in original). The specific purpose of the regulatory amendments is to clarify which party bears the burden of proof at fair hearings concerning Interim Assistance reimbursement (IAR) as to the issues of the source of the funding and the amount deducted from the initial payment of Supplemental Security Income (SSI) as reimbursement of public assistance. The general right to a fair hearing regarding IAR and the amount deducted is afforded under a different State regulation — 18 NYCRR 358-3.1(b)(15). Additionally, the right to a fair hearing pertaining to IAR is also delineated on OTDA Form LDSS 2921 Statewide (the common application). Consequently, OTDA maintains that the requested amendment is unnecessary.

A related comment requested that OTDA amend 18 NYCRR § 358-3.1(b)(15) to include the same italicized language discussed above. This comment is beyond the scope of this Assessment of Public Comments insofar as it does not specifically pertain to the regulatory amendments, and therefore is not appropriately addressed in this Assessment of Public Comments. However, even if this comment was properly within the scope of this Assessment of Public Comments, OTDA reiterates that the right to a fair hearing pertaining to IAR is already delineated in State regulation at 18 NYCRR § 358-3.1(b)(15) and in the Statewide common application, thereby rendering this requested amendment unnecessary.

One comment requested that OTDA amend 18 NYCRR § 358-5.9(a)(2)(i) to expand the social services agency's burden of proving that its actions were correct regarding "the denial or adequacy of emergency assistance ...." 18 NYCRR § 358-3.1(b)(1) and (6), respectively, afford an applicant for or recipient of public assistance, benefits, or services the general right to a fair hearing if an application has been denied by a social services agency or if a recipient's public assistance is inadequate. OTDA reiterates that the specific purpose of the regulatory amendments is to clarify which party bears the burden of proof at fair hearings concerning IAR as to the issues of the source of the funding and the amount deducted from the initial payment of SSI as reimbursement of public assistance. Consequently, OTDA maintains that the comment is outside the scope of the regulatory amendments.

### NOTICE OF ADOPTION

**Child Support Program**

I.D. No. TDA-47-15-00004-A

Filing No. 415

Filing Date: 2016-04-19

Effective Date: 2016-05-04

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

**Action taken:** Repeal of sections 347.2 and 347.13; addition of section 300.13 and new sections 347.2 and 347.13; amendment of sections 346.2, 347.12, 347.17, 347.25, 352.15, 352.22, 352.31 and 369.1 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 17(a)-(b), (i), 20(2)-(3), 34, 111-a, 111-c(2)(a), (d), 131-a(8)(a)(v), 158(5)-(6)(i), 348(2)-(3); Federal Social Security Act, sections 408(a)(3), 457; title 45 of the Code of Federal Regulations, sections 302.32, 302.50-302.52, 303.72; Federal Deficit Reduction Act of 2005 (P.L. 109-171)

**Subject:** Child Support Program.

**Purpose:** Amend regulatory requirements concerning the distribution and disbursement of child support collections.

**Summary of final rule:** This is a general summary of the proposed rule text concerning the distribution and disbursement of support collections. The full rule text is posted at the following State website: [www.otda.ny.gov](http://www.otda.ny.gov)

A new section 18 NYCRR § 300.13 would be added reflecting the requirements of 18 NYCRR § 347.25. Both sections address desk reviews of the distribution and disbursement of support collections.

The amendment to 18 NYCRR § 346.2 would update a cross-reference to 18 NYCRR § 347.17. Both of these sections concern support services for individuals who are not eligible for public assistance and care or foster care.

The current section 18 NYCRR § 347.2 would be repealed, and a new section § 347.2 would be added to provide definitions for 18 NYCRR Part 347. The new definitions would conform to federal requirements and provide consistency throughout Part 347.

The amendments to 18 NYCRR § 347.12 would address reporting support collections for public assistance, medical assistance-only and foster care cases. These amendments are needed, in part, to reflect references to the revised 18 NYCRR § 347.13.

The following sections of 18 NYCRR would be added or amended to provide consistency with Title IV-D of the federal Social Security Act and with State options provided by the Deficit Reduction Act of 2005: § 347.13 addressing the distribution and disbursement of support collections; § 352.15 addressing support payments; § 352.22 addressing noncountable income and resources; § 352.31 addressing estimates of need and application of income; and § 369.1 addressing applications for or receipt of public assistance as an assignment to the State and the social services districts of rights to support.

The amendments to 18 NYCRR § 347.17 would update a cross-reference and provide guidance for the support collection units whenever an individual in receipt of services becomes ineligible for public assistance and care or the individual's child is ineligible for foster care. The amendments address notice requirements and the continuation of services.

The amendments to 18 NYCRR § 347.25 would update the regulations regarding the desk review of the distribution and disbursement of support collections. The desk review process is an accounting of the distribution and disbursement of support collections made on behalf of a current or former recipient of public assistance who is or was receiving child support enforcement services.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 347.17(a)(2) and (f)(1).

**Text of rule and any required statements and analyses may be obtained from:** Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street 16-C, Albany, NY 12243-0001, (518) 486-7503, email: [richard.rhodesjr@otda.ny.gov](mailto:richard.rhodesjr@otda.ny.gov)

#### **Revised Regulatory Impact Statement**

Changes made to the published rule do not necessitate revision of the previously published RIS. The caption of 18 NYCRR § 347.17 was modified by adding the following underlined clarifying language: "Child support services available to individuals not otherwise eligible and to individuals who become ineligible for public assistance and care or whose children are ineligible for foster care." Paragraph (2) of subdivision (a) of 18 NYCRR § 347.17 was modified by adding the following underlined clarifying language:

(a) All child support services under this Part and Part 346 of this Title must be made available to any individual not otherwise eligible upon receipt of either (1) a signed application on a form prescribed by the Office and filed by such individual with a child support enforcement unit or support collection unit, or (2) an application made to a court, as set forth in section 346.2 of this Title, and to individuals who become ineligible for public assistance and care or whose children are ineligible for foster care.

In the new paragraph 18 NYCRR § 347.17(f)(1), the following underlined clarifying language was added to the text of the regulatory amendments, which requires the support collection unit to:

provide written notice to the individual, within 5 business days of the support collection unit's receipt of notification from the social services district that the individual is ineligible for public assistance and care or the individual's child is ineligible for foster care, that child support services will be continued unless the support collection unit receives a request by the individual to discontinue child support services.

These revisions were made in response to public comments and merely clarify that it is the support collection unit's receipt of notice from the social services district of a child's ineligibility for foster care - not the ineligibility for foster care of an adult individual responsible for support - that triggers the five business day notice requirement on the part of the support collection unit. The published RIS referenced 18 NYCRR § 347.17 generally, but did not specifically reference the paragraphs so revised. Consequently, a revised RIS is unnecessary.

#### **Revised Regulatory Flexibility Analysis**

Changes made to the published rule do not necessitate revision of the previously published RFASB&G. The caption of 18 NYCRR § 347.17 was modified by adding the following underlined clarifying language: "Child support services available to individuals not otherwise eligible and to individuals who become ineligible for public assistance and care or whose children are ineligible for foster care." Paragraph (2) of subdivision (a) of 18 NYCRR § 347.17 was modified by adding the following underlined clarifying language:

(a) All child support services under this Part and Part 346 of this Title must be made available to any individual not otherwise eligible upon receipt of either (1) a signed application on a form prescribed by the Office and filed by such individual with a child support enforcement unit or support collection unit, or (2) an application made to a court, as set forth in section 346.2 of this Title, and to individuals who become ineligible for public assistance and care or whose children are ineligible for foster care.

In the new paragraph 18 NYCRR § 347.17(f)(1), the following underlined clarifying language was added to the text of the regulatory amendments, which requires the support collection unit to:

provide written notice to the individual, within 5 business days of the support collection unit's receipt of notification from the social services district that the individual is ineligible for public assistance and care or the individual's child is ineligible for foster care, that child support services will be continued unless the support collection unit receives a request by the individual to discontinue child support services.

These revisions were made in response to public comments and merely clarify that it is the support collection unit's receipt of notice from the social services district of a child's ineligibility for foster care - not the ineligibility for foster care of an adult individual responsible for support - that triggers the five business day notice requirement on the part of the support collection unit. The original text of 18 NYCRR § 347.17 was not referenced in the previously published RFASB&G, and the revisions would not impact upon small businesses and local governments. Consequently, a revised RFASB&G is unnecessary.

#### **Revised Rural Area Flexibility Analysis**

Changes made to the published rule do not necessitate revision of the previously published RAFA. The caption of 18 NYCRR § 347.17 was modified by adding the following underlined clarifying language: "Child support services available to individuals not otherwise eligible and to individuals who become ineligible for public assistance and care or whose children are ineligible for foster care." Paragraph (2) of subdivision (a) of 18 NYCRR § 347.17 was modified by adding the following underlined clarifying language:

(a) All child support services under this Part and Part 346 of this Title must be made available to any individual not otherwise eligible upon receipt of either (1) a signed application on a form prescribed by the Office and filed by such individual with a child support enforcement unit or support collection unit, or (2) an application made to a court, as set forth in section 346.2 of this Title, and to individuals who become ineligible for public assistance and care or whose children are ineligible for foster care.

In the new paragraph 18 NYCRR § 347.17(f)(1), the following underlined clarifying language was added to the text of the regulatory amendments, which requires the support collection unit:

to provide written notice to the individual, within 5 business days of the support collection unit's receipt of notification from the social services district that the individual is ineligible for public assistance and care or the individual's child is ineligible for foster care, that child support services will be continued unless the support collection unit receives a request by the individual to discontinue child support services.

These revisions were made in response to public comments and merely clarify that it is the support collection unit's receipt of notice from the social services district of a child's ineligibility for foster care - not the ineligibility for foster care of an adult individual responsible for support - that triggers the five business day notice requirement on the part of the support collection unit. The original text of 18 NYCRR § 347.17 was not referenced in the previously published RAFA, and the revisions would not impact upon the 44 rural area social services districts in the State. Consequently, a revised RAFA is unnecessary.

#### **Revised Job Impact Statement**

Changes made to the published rule do not necessitate revision of the previously published JIS. The caption of 18 NYCRR § 347.17 was modified by adding the following underlined clarifying language: "Child support services available to individuals not otherwise eligible and to individuals who become ineligible for public assistance and care or whose children are ineligible for foster care." Paragraph (2) of subdivision (a) of 18 NYCRR § 347.17 was modified by adding the following underlined clarifying language:

(a) All child support services under this Part and Part 346 of this Title must be made available to any individual not otherwise eligible upon

receipt of either (1) a signed application on a form prescribed by the Office and filed by such individual with a child support enforcement unit or support collection unit, or (2) an application made to a court, as set forth in section 346.2 of this Title, and to individuals who become ineligible for public assistance and care or whose children are ineligible for foster care.

In the new paragraph 18 NYCRR § 347.17(f)(1), the following underlined language was added to the text of the regulatory amendments, which requires the support collection unit to:

provide written notice to the individual, within 5 business days of the support collection unit's receipt of notification from the social services district that the individual is ineligible for public assistance and care or the individual's child is ineligible for foster care, that child support services will be continued unless the support collection unit receives a request by the individual to discontinue child support services.

These revisions were made in response to public comments and merely clarify that it is the support collection unit's receipt of notice from the social services district of a *child's* ineligibility for foster care - not the ineligibility for foster care of an adult individual responsible for support - that triggers the five business day notice requirement on the part of the support collection unit. The original text of 18 NYCRR § 347.17 was not referenced in the previously published JIS, and the revisions would not impact upon jobs and employment opportunities in the State. Consequently, a revised JIS is unnecessary.

#### **Initial Review of Rule**

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

#### **Assessment of Public Comment**

The Office of Temporary and Disability Assistance (OTDA) received two comments relative to the regulatory amendments. These comments have been reviewed and duly considered in this Assessment of Public Comments.

One comment suggested that the proposed regulatory text in 18 NYCRR § 347.13(f)(5) and (6), regarding the treatment of amounts of support collections disbursed to a social services district in excess of the amount required to reimburse foster care maintenance payments, be revised to read "to the social services district with care and custody or guardianship and custody of the child." The text of the regulatory amendments - which reads "to the social services district responsible for supervising the child's placement and care" - is based upon federal regulatory language found in 45 Code of Federal Regulations § 302.52(b)(4) addressing the distribution of support in foster care cases. Insofar as the text of the regulatory amendments is consistent with the federal regulations for distribution of child support and is not likely to cause confusion concerning the legal authority in foster care cases, OTDA maintains that such a revision is unnecessary.

One comment suggested revising 18 NYCRR § 347.17(f)(1) to clarify that it would be the support collection unit's receipt from the social services district of notice of a child's ineligibility for foster care - not the ineligibility for foster care of an adult individual responsible for support - that triggers the five business day notice requirement on the part of the support collection unit. OTDA agrees with this comment, and added clarifying language to 18 NYCRR § 347.17's caption and to § 347.17(a)(2) and § 347.17 (f)(1) to resolve any potential ambiguity.