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.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-01-17-00008-A
Filing No. 1058
Filing Date: 2017-12-07
Effective Date: 2017-12-27

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of final rule: At a meeting of the State Civil Service Commission held November 15, 2016, the following resolution was adopted pursuant to Section 6 of the Civil Service Law:

RESOLVED, That subject to the approval of the Governor, Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading “Gaming Commission,” be and hereby is amended by adding thereto the following position:

Director Office of Racing and Promotion Development
it having been determined that competitive or non-competitive classification is not practicable for filling this position.

Final rule as compared with last published rule: Nonsubstantive changes were made in Appendix 1.

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

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA, and JIS.

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-01-17-00006-A
Filing No. 1065
Filing Date: 2017-12-07
Effective Date: 2017-12-27

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.

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

Text or summary was published in the January 4, 2017 issue of the Register, I.D. No. CVS-01-17-00006-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-01-17-00010-A
Filing No. 1059
Filing Date: 2017-12-07
Effective Date: 2017-12-27

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the January 4, 2017 issue of the Register, I.D. No. CVS-01-17-00010-P.

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

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

Jurisdictional Classification
I.D. No. CVS-01-17-00011-A
Filing No. 1060
Filing Date: 2017-12-07
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the January 4, 2017 issue of the Register, I.D. No. CVS-01-17-00011-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-01-17-00012-A
Filing No. 1064
Filing Date: 2017-12-07
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete a position from and classify a position in the exempt class.
Text or summary was published in the January 4, 2017 issue of the Register, I.D. No. CVS-01-17-00012-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-01-17-00013-A
Filing No. 1062
Filing Date: 2017-12-07
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the January 4, 2017 issue of the Register, I.D. No. CVS-01-17-00013-P.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-01-17-00014-A
Filing No. 1057
Filing Date: 2017-12-07
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete a position from and classify a position in the exempt class.
Text or summary was published in the January 4, 2017 issue of the Register, I.D. No. CVS-01-17-00014-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-01-17-00015-A
Filing No. 1061
Filing Date: 2017-12-07
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the January 4, 2017 issue of the Register, I.D. No. CVS-01-17-00015-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-04-17-00003-A
Filing No. 1063
Filing Date: 2017-12-07
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the January 25, 2017 issue of the Register, I.D. No. CVS-04-17-00004-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-04-17-00004-A
Filing No. 1066
Filing Date: 2017-12-07
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the January 25, 2017 issue of the Register, I.D. No. CVS-04-17-00004-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-04-17-00004-A
Filing No. 1066
Filing Date: 2017-12-07
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the January 25, 2017 issue of the Register, I.D. No. CVS-04-17-00004-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-04-17-00004-A
Filing No. 1066
Filing Date: 2017-12-07
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the January 25, 2017 issue of the Register, I.D. No. CVS-04-17-00004-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-04-17-00004-A
Filing No. 1066
Filing Date: 2017-12-07
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the January 25, 2017 issue of the Register, I.D. No. CVS-04-17-00004-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-04-17-00004-A
Filing No. 1066
Filing Date: 2017-12-07
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the January 25, 2017 issue of the Register, I.D. No. CVS-04-17-00004-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-04-17-00004-A
Filing No. 1066
Filing Date: 2017-12-07
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the January 25, 2017 issue of the Register, I.D. No. CVS-04-17-00004-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-04-17-00004-A
Filing No. 1066
Filing Date: 2017-12-07
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the January 25, 2017 issue of the Register, I.D. No. CVS-04-17-00004-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-04-17-00004-A
Filing No. 1066
Filing Date: 2017-12-07
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the January 25, 2017 issue of the Register, I.D. No. CVS-04-17-00004-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-04-17-00004-A
Filing No. 1066
Filing Date: 2017-12-07
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the January 25, 2017 issue of the Register, I.D. No. CVS-04-17-00004-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.
NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-12-17-00004-A
Filing No. 1085
Filing Date: 2017-12-12
Effective Date: 2017-12-27

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the non-competitive class.

Text or summary was published in the March 22, 2017 issue of the Register, I.D. No. CVS-12-17-00004-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-12-17-00005-A
Filing No. 1078
Filing Date: 2017-12-12
Effective Date: 2017-12-27

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete a position from and classify a position in the non-competitive class.

Text or summary was published in the March 22, 2017 issue of the Register, I.D. No. CVS-12-17-00005-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-12-17-00006-A
Filing No. 1079
Filing Date: 2017-12-12
Effective Date: 2017-12-27

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete positions from and classify positions in the non-competitive class.

Text or summary was published in the March 22, 2017 issue of the Register, I.D. No. CVS-12-17-00006-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-12-17-00007-A
Filing No. 1080
Filing Date: 2017-12-12
Effective Date: 2017-12-27

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the non-competitive class.

Text or summary was published in the March 22, 2017 issue of the Register, I.D. No. CVS-12-17-00007-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-12-17-00008-A
Filing No. 1081
Filing Date: 2017-12-12
Effective Date: 2017-12-27

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the non-competitive class.

Text or summary was published in the March 22, 2017 issue of the Register, I.D. No. CVS-12-17-00008-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-12-17-00009-A
Filing No. 1082
Filing Date: 2017-12-12
Effective Date: 2017-12-27

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the non-competitive class.

Text or summary was published in the March 22, 2017 issue of the Register, I.D. No. CVS-12-17-00009-P.

Final rule as compared with last published rule: No changes.
NOTICE OF ADOPTION

Jurisdictional Classification
L.D. No. CVS-12-17-00010-A
Filing No. 1089
Filing Date: 2017-12-12
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.

Text or summary was published in the March 22, 2017 issue of the Register.

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

NOTICE OF ADOPTION

Jurisdictional Classification
L.D. No. CVS-17-17-00002-A
Filing No. 1095
Filing Date: 2017-12-12
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.

Text or summary was published in the April 26, 2017 issue of the Register.

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

NOTICE OF ADOPTION

Jurisdictional Classification
L.D. No. CVS-18-17-00003-A
Filing No. 1087
Filing Date: 2017-12-12
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the non-competitive class.

Text or summary was published in the May 3, 2017 issue of the Register.

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

NOTICE OF ADOPTION

Jurisdictional Classification
L.D. No. CVS-18-17-00004-A
Filing No. 1093
Filing Date: 2017-12-12
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.

Text or summary was published in the May 3, 2017 issue of the Register.

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

NOTICE OF ADOPTION

Jurisdictional Classification
L.D. No. CVS-18-17-00005-A
Filing No. 1091
Filing Date: 2017-12-12
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Purpose: To classify positions in the exempt class.

Text or summary was published in the May 3, 2017 issue of the Register, I.D. No. CVS-18-17-00005-P.

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

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

Assessment of Public Comment

At its regularly scheduled public meeting, held in Albany, NY on March 15, 2017, the State Civil Service Commission approved multiple positions in this job title for placement outside of the competitive class. Article V, section 6, of the State Constitution requires that appointments in the classified service of the State shall be “made according to merit and fitness, to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive…” In Civil Service Law sections 41 and 42, the Legislature has set forth classes of positions for which competitive examination is not practicable, thereby authorizing the filling of positions in the exempt and non-competitive jurisdictional classes, respectively. The State Civil Service Commission may place positions and titles in exempt and non-competitive classes in accordance with powers conferred by section 6 of the Civil Service Law.

Thirty-four (34) public comments were received opposing the Commission’s placement of the positions subject to this rule making outside of the competitive class. All submitters identified themselves as current or former State employees or as affiliated with the Public Employees Association Inc., AFL-CIO. Almost all of the public comments were duplicative “form letter”-style responses. No public comment clearly set forth why competitive examination was practicable for the subject positions or proposed any alternative to the proposed rule making, other than to posit that the proposed jurisdictional classification was somehow contrary to or a purported circumvention of the merit system. By contrast, the appointing authority and Department of Civil Service personnel professionals have established, in detail, why competitive examination would be impracticable for the subject positions based upon the carefully articulated duties and qualifications necessary for successful job performance. Accordingly, the Commission continues to find that these positions properly belong outside of the competitive class and this amendment to the Appendices of Title 4 of NYCRR has been approved for adoption without modification.

NOTICE OF ADOPTION

Jurisdictional Classification

L.D. No. CVS-18-17-00006-A
Filing No. 1094
Filing Date: 2017-12-12
Effective Date: 2017-12-27

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the May 3, 2017 issue of the Register, I.D. No. CVS-18-17-00006-P.

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

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

Assessment of Public Comment

The agency received no public comment.
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-18-17-00011-A
Filing No. 1097
Filing Date: 2017-12-12
Effective Date: 2017-12-27

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)

Purpose: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the May 3, 2017 issue of the Register, I.D. No. CVS-18-17-00011-P.
Final rule as compared with last published rule: No changes.

Assessment of Public Comment
Thirty-four (34) public comments were received opposing the Commission’s placement of the positions subject to this rule making outside of the competitive class. All submitters identified themselves as current or former State employees or as affiliated with the Public Employees Association Inc., AFL-CIO. Almost all of the public comments were duplicative “form letter”-style responses. No public comment clearly set forth why competitive examination was practicable for the subject positions or proposed any alternative to the proposed rule making, other than to posit that the proposed jurisdictional classification was somehow contrary to or a purported circumvention of the merit system. By contrast, the appointing authority and Department of Civil Service personnel professionals have established, in detail, why competitive examination would be impracticable for the subject positions based upon the carefully articulated duties and qualifications necessary for successful job performance. Accordingly, the Commission continues to find that these positions properly belong outside of the competitive class and this amendment to the Appendices of Title 4 of NYCRR has been approved for adoption without modification.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-18-17-00011-A
Filing No. 1097
Filing Date: 2017-12-12
Effective Date: 2017-12-27

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)

Purpose: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the May 3, 2017 issue of the Register, I.D. No. CVS-18-17-00011-P.
Final rule as compared with last published rule: No changes.

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

Assessment of Public Comment
At its regularly scheduled public meeting, held in Albany, NY on March 15, 2017, the State Civil Service Commission approved multiple positions in this job title for placement outside of the competitive class. Article V, section 6, of the State Constitution requires that appointments in the classified service of the State shall be “made according to merit and fitness, to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive...” In Civil Service Law sections 41 and 42, the Legislature has set forth classes of positions for which competitive examination is not practicable, thereby authorizing the filling of positions in the exempt and non-competitive jurisdictional classes, respectively. The State Civil Service Commission may place positions and titles in exempt and non-competitive classes in accordance with powers conferred by section 6 of the Civil Service Law.

Thirty-four (34) public comments were received opposing the Commission’s placement of the positions subject to this rule making outside of the competitive class. All submitters identified themselves as current or former State employees or as affiliated with the Public Employees Association Inc., AFL-CIO. Almost all of the public comments were duplicative “form letter”-style responses. No public comment clearly set forth why competitive examination was practicable for the subject positions or proposed any alternative to the proposed rule making, other than to posit that the proposed jurisdictional classification was somehow contrary to or a purported circumvention of the merit system. By contrast, the appointing authority and Department of Civil Service personnel professionals have established, in detail, why competitive examination would be impracticable for the subject positions based upon the carefully articulated duties and qualifications necessary for successful job performance. Accordingly, the Commission continues to find that these positions properly belong outside of the competitive class and this amendment to the Appendices of Title 4 of NYCRR has been approved for adoption without modification.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-23-17-00001-A
Filing No. 1100
Filing Date: 2017-12-12
Effective Date: 2017-12-27

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

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

Text or summary was published in the June 7, 2017 issue of the Register, I.D. No. CVS-23-17-00001-P.
Final rule as compared with last published rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-23-17-00002-A
Filing No. 1106
Filing Date: 2017-12-12
Effective Date: 2017-12-27

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Rule Making Activities

NOTICE OF ADOPTION

Jurisdictional Classification
L.D. No. CVS-23-17-00003-A
Filing No. 1102
Filing Date: 2017-12-12
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the June 7, 2017 issue of the Register, I.D. No. CVS-23-17-00002-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
L.D. No. CVS-23-17-00005-A
Filing No. 1099
Filing Date: 2017-12-12
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the non-competitive class.
Text or summary was published in the June 7, 2017 issue of the Register, I.D. No. CVS-23-17-00003-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
L.D. No. CVS-23-17-00007-A
Filing No. 1104
Filing Date: 2017-12-12
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the non-competitive class.
Text or summary was published in the June 7, 2017 issue of the Register, I.D. No. CVS-23-17-00006-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
L.D. No. CVS-23-17-00008-A
Filing No. 1101
Filing Date: 2017-12-12
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the non-competitive class.
Text or summary was published in the June 7, 2017 issue of the Register, I.D. No. CVS-23-17-00006-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.
NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-23-17-00009-A
Filing No. 1098
Filing Date: 2017-12-12
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Purpose: To classify a position in the exempt class.

Text or summary was published in the June 7, 2017 issue of the Register, I.D. No. CVS-23-17-00009-P.
Final rule as compared with last published rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-23-17-00010-A
Filing No. 1107
Filing Date: 2017-12-12
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Purpose: To classify a position in the exempt class.

Text or summary was published in the June 7, 2017 issue of the Register, I.D. No. CVS-23-17-00010-P.
Final rule as compared with last published rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-23-17-00011-A
Filing No. 1108
Filing Date: 2017-12-12
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Purpose: To classify a position in the exempt class.

Text or summary was published in the June 7, 2017 issue of the Register, I.D. No. CVS-23-17-00011-P.
Final rule as compared with last published rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-23-17-00012-A
Filing No. 1109
Filing Date: 2017-12-12
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Purpose: To delete positions from and classify positions in the exempt class.

Text or summary was published in the June 7, 2017 issue of the Register, I.D. No. CVS-23-17-00012-P.
Final rule as compared with last published rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-23-17-00013-A
Filing No. 1111
Filing Date: 2017-12-12
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Purpose: To delete positions from and classify positions in the exempt class.

Text or summary was published in the June 7, 2017 issue of the Register, I.D. No. CVS-23-17-00013-P.
Final rule as compared with last published rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-23-17-00014-A
Filing No. 1110
Filing Date: 2017-12-12
Effective Date: 2017-12-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Purpose: To delete positions from and classify positions in the exempt class.

Text or summary was published in the June 7, 2017 issue of the Register, I.D. No. CVS-23-17-00014-P.
Final rule as compared with last published rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.
EMERGENCY RULE MAKING

Continuing Teacher and Leader Education for Teachers in Nonpublic Schools

I.D. No. EDU-44-17-00007-E
Filing No. 1076
Filing Date: 2017-12-12
Effective Date: 2018-01-15

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

Action taken: Amendment of section 80-6.1 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 305, 3001, 3004, 3006 and 3006-a. L. 2017, ch. 311

Finding of necessity for emergency rule: Preservation of general welfare. Specific reasons underlying the finding of necessity: The 2015-2016 State Budget added Education Law § 3006-a to require all holders of teaching certificates, teaching assistant certificates, and educational leadership certificates which are valid for life (Permanent, Professional and Teaching Assistant Level III) to register with the Department every five years and that holders of the Professional and Teaching Assistant Level III certificates complete 100 hours of continuing teacher and leader education during the five-year registration period.

Chapter 311 of the Laws of 2017 amends Education Law § 3006-a to add nonpublic schools to the provisions relating to the mandatory continuing education requirements for all holders of professional certificates in the classroom teaching service, holders of level III teaching assistant certificates, and holders of professional certificates in the educational leadership service. In order to implement the new law, the proposed regulation amends the definition of applicable school in section 80-6.1 of the Commissioner’s regulations to include non-public schools.

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 January 2018 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the January Regents meeting, is January 25, 2018, the date a Notice of Adoption would be published in the State Register. Since the emergency rule adopted at the October 2017 meeting will expire on January 14, 2018, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to ensure that the proposed amendment is effective immediately in order to timely implement Chapter 311 of the Laws of 2017 and to ensure that the emergency rule adopted at the October 2017 meeting will not expire before it can be adopted as a permanent rule.

Subject: Continuing Teacher and Leader Education for Teachers in Nonpublic Schools.

Purpose: To implement chapter 311 of the Laws of 2017.

Text of emergency rule: Subdivision (a) of section 80-6.1 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(a) Applicable school means a school district or board of cooperative educational services or nonpublic school that is providing instruction pursuant to Education Law § 3204(2) located in New York State. For purposes of this definition, the City School District of New York and any of its components shall be considered a single school district.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-44-17-00007-EP, Issue of November 1, 2017. The emergency rule will expire February 9, 2018.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: kirti.goswami@nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:
   Education Law 101 (not subdivided) authorizes the Regents to serve as the State Board of Regents and the Regents have the power to enact rules and regulations for the government and management of all public schools and all of the educational work of the state.

   Education Law 207 (not subdivided) gives the Regents the power to make regulations and rules to implement the provisions of Education Law.

2. LEGISLATIVE OBJECTIVES:
   The purpose of the proposed emergency amendment is to implement Chapter 311 of the Laws of 2017 which amends Education Law 3006-a to add nonpublic schools to the provisions relating to the mandatory continuing teacher and leader education requirements for all holders of professional certificates in the classroom teaching service, holders of Level III teaching assistant certificates, holders of professional certificates in the educational leadership service.

3. NEEDS AND BENEFITS:
   The purpose of the proposed emergency amendment is to implement Chapter 311 of the Laws of 2017 which amends Education Law 3006-a to add nonpublic schools to the provisions relating to the mandatory continuing teacher and leader education requirements for all holders of professional certificates in the classroom teaching service, holders of Level III teaching assistant certificates, and holders of professional certificates in the educational leadership service.

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.
   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, or personnel requirements.

6. PAPERWORK:
   The proposed amendment does not impose any additional paperwork requirements.

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

8. ALTERNATIVES:
   The proposed amendment is the result of Chapter 311 of the Laws of 2017 which amends Education Law 3006-a. No alternatives were considered.

9. FEDERAL STANDARDS:
There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

If adopted by the Board of Regents at its October meeting, the proposed amendment will become effective as an emergency measure on October 17, 2017. Following the 45-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be presented to the Board of Regents for adoption at its January 2018 meeting and would become effective as a permanent rule on February 7, 2018.

Regulatory Flexibility Analysis

The purpose of the proposed emergency amendment to Subpart 80-6 of the Regulations of the Commissioner of Education is to implement Chapter 311 of the Laws of 2017 which amends Education § 3006-a to add nonpublic schools to the provisions relating to the mandatory continuing teacher and leader education requirements for certain holders of professional certificates in the classroom teaching service, holders of Level III teaching assistant certificates, and holders of professional certificates in the educational leadership service.

The amendment does not impose any new recordkeeping or other compliance requirements, and will not have an adverse economic impact, on local governments or small businesses. Because it is evident from the nature of the proposed 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:

This proposed amendment applies to holders of professional certificates in the classroom teaching service, holders of Level III teaching assistant certificates, and holders of professional certificates in the educational leadership service practicing in non-public schools, 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:

The purpose of the proposed emergency amendment to Subpart 80-6 of the Regulations of the Commissioner of Education is to implement Chapter 311 of the Laws of 2017 which amends Education § 3006-a to add nonpublic schools to the provisions relating to the mandatory continuing teacher and leader education requirements for certain holders of professional certificates in the classroom teaching service, holders of Level III teaching assistant certificates, and holders of professional certificates in the educational leadership service.

Proposed Amendment

The amendment to section 80-6.1 of the Regulations of the Commissioner of Education is amended to include non-public schools. The proposed amendment imposes no reporting, recordkeeping, and other compliance requirements and/or professional services beyond those imposed by law.

3. COSTS:

The proposed amendment does not impose any additional costs beyond those imposed by the law.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment seeks to implement Chapter 311 of the Laws of 2017 which amends Education Law § 3006-a. Therefore, no alternatives were considered.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed emergency amendment to Subpart 80-6 of the Regulations of the Commissioner of Education is to implement Chapter 311 of the Laws of 2017 which amends Education § 3006-a to add nonpublic schools to the provisions relating to the mandatory continuing teacher and leader education requirements for certain holders of professional certificates in the classroom teaching service, holders of Level III teaching assistant certificates, and holders of professional certificates in the educational leadership service.

Because it is evident from the nature of the proposed amendment 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.

Assessment of Public Comment

The agency received no public comment.

Temporary Certificate for Teachers Displaced from Puerto Rico and/or Another U.S. Territory to Teach in NY

L.D. No. EDU-44-17-00010-E

Filing No. 1070

Filing Date: 2017-12-12

Effective Date: 2018-01-15

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

Action taken: Addition of section 80-5.26 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 305, 3001, 3004 and 3009.

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

Specific reasons underlying the finding of necessity: On September 20, 2017, Category 5 Hurricane Maria made landfall in Puerto Rico and other U.S. territories and wreaked havoc. As a result of this catastrophic event, many individuals directly affected by Hurricane Maria have been displaced, including children who may come to New York State and enroll in school.

The expectation is that many of these students may not be fluent in English, and the Department wants to ensure that there are adequate teachers capable of teaching these students. The Department also anticipates an influx of individuals who were certified teachers in Puerto Rico and other U.S. territories coming to New York State as well, and the Department would like to advance a regulation that will allow those certified in Puerto Rico or another U.S. territory who have been affected by and displaced by Hurricane Maria to become certified in New York for a temporary period of time.

At this time, the Department would like to add a new Section 80-5.26 to the Commissioner’s Regulations to allow those who hold a teaching certificate in Puerto Rico or another U.S. territory to obtain a nonrenewable temporary hardship certificate that is valid until June 30, 2018 to teach in New York State public school districts and BOCES, provided they meet certain requirements. 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 January 2018 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the January Regents meeting, is January 25, 2018, the date a Notice of Adoption would be published in the State Register. However, emergency action taken at the October 2017 meeting will expire on January 14, 2017. Therefore, a second emergency adoption is needed to preserve by the general welfare by ensuring that the proposed rule adopted at the October 2017 meeting will remain in effect until it can be adopted as a permanent rule and because the resulting influx of individuals from Puerto Rico and other U.S. territories who have been affected by Hurricane Maria is expected to be immediate, and the Department must ensure that the proposed amendment is effective immediately to timely allow for those individuals who meet the requirements to apply for this temporary certificate.

Subject: Temporary certificate for teachers displaced from Puerto Rico and/or another U.S. territory to teach in NY.

Purpose: To establish requirements for a temporary certificate for teachers displaced from Puerto Rico and/or another U.S. territory.

Text of emergency rule: Add a new section 80-5.26 to the Regulations of the Commissioner of Education, to read as follows:

80-5.26 Temporary ‘‘Hurricane Maria’’ certificate for teachers displaced from Puerto Rico and/or another U.S. territory.

(a) Temporary ‘‘Hurricane Maria’’ hardship certificate to teach in New York. The Commissioner may issue a temporary certificate in the classroom teaching service for teachers who held a certificate or authorization to practice from Puerto Rico or another United States territory prior to Hurricane Maria and who as a result of the hurricane were forced to relocate to New York. The requirements for such certificate are as follows:

(1) (i) The candidate shall hold a valid certificate or equivalent authorization to practice from Puerto Rico or another U.S. territory impacted by Hurricane Maria that is equivalent to the title and type of the certificate sought;

(ii) if the candidate is unable to provide the Department with a
Proposed Amendment

The Department is proposing to add a new Section 80-5.26 to the Regulations to allow for a temporary certificate for teachers who have been displaced from Puerto Rico and other U.S. territories as a result of Hurricane Maria to teach in New York if they meet the following requirements:

1. The candidate holds a certificate or authorization to teach from Puerto Rico or another U.S. territory to which the candidate was displaced by Hurricane Maria and as a result of such hurricane he/she is unable to produce written evidence of such certificate.

2. The candidate shall submit satisfactory evidence of satisfactory performance in a public school (K-12) in Puerto Rico or another U.S. territory (such as pay-stubs or W-2 forms) impacted by Hurricane Maria in a position that is equivalent to the title and type of the certificate sought. Such experience must be within one year of the stated effective date of this section.

3. 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 course work or training in harassment, bullying and discrimination prevention and intervention; and section 80-1.1 relating to a criminal history check.

4. The candidate shall submit satisfactory evidence of having a commitment of employment from a school district or BOCES for one year or employment as a teacher in the area of the certificate sought, which shall include the following: a plan from the school district for mentoring and appropriate instructional support.

(b) Upon meeting the requirements in subdivision (a) of this section, the Commissioner may issue a nonrenewable temporary hardship certificate that is valid until June 30, 2018.

This notice is intended to serve only as a notice of emergency adoption. The agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-44-17-00010-EP, Issue of November 1, 2017. The emergency rule will expire February 9, 2018.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law 101(1) (not subdivided) charges the Department with the general management and supervision of all public schools and all of the educational work of the state.

Education Law 207(1) (not subdivided) grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Education Law 305(1) authorizes the Commissioner to enforce laws relating to State educational laws and execution of 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 monies from being used to pay the salary of an unqualified teacher.

2. LEGISLATIVE OBJECTIVES:

The purpose of the proposed addition of new section 80-5.26 to the Regulations of the Commissioner of Education is to allow a temporary certificate for teachers who have been displaced from Puerto Rico and/or another U.S. territory as a result of Hurricane Maria to teach in New York state, upon meeting certain requirements.

3. NEEDS AND BENEFITS:

As a result, of the category 5 Hurricane that made landfall in Puerto Rico on September 20, 2017, we are anticipating an influx of individuals who are certified teachers in Puerto Rico and other U.S. territories affected by Hurricane Maria coming to New York State, and the Department would like to advance a regulation that will allow individuals who are appropriately certified in Puerto Rico or another U.S. territory and who have been affected by and displaced by Hurricane Maria to become certified in New York for a temporary period of time. The Department also anticipates that many children from Puerto Rico and other U.S. territories will come to New York (possibly staying with family who reside in New York) and enroll in New York State public schools and/or BOCES.

The expectation is that many of these students may not be fluent in English, and the Department wants to ensure that there are a sufficient number of certified teachers capable of teaching and supporting these students so that their education can continue over the course of the next several months.

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.

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment does not impose any additional paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment is meant to directly address the natural disaster imposed by Hurricane Maria in Puerto Rico and other affected U.S. territories and the individuals displaced by such disaster. No other alternatives were considered at the time.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

If adopted as an emergency measure at the October meeting, the proposed amendment will become effective on October 17, 2017. Follow-
Regulatory Flexibility Analysis

The purpose of the proposed amendment is to provide a temporary certificate for teachers who have been displaced from Puerto Rico and/or another U.S. territory as a result of Hurricane Maria to teach in New York State. This temporary certificate will be available for those who provide evidence that they hold a valid certificate or authorization to teach from Puerto Rico and/or another U.S. territory affected by Hurricane Maria to teach in a public school in New York or another U.S. territory. The candidate must also complete the required workshops and have a fingerprint clearance, and a commitment of employment from a school district or BOCES in New York.

The proposed amendment does not impose any new recordkeeping or other compliance requirements, and will not have an adverse economic impact, on local governments or small businesses. Because it is evident from the nature of the proposed 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:

This proposed amendment applies to all individuals pursuing certification as a teacher in New York State, regardless of where they were educated or certified in Puerto Rico and/or another U.S. territory. The Department recognizes that there are sufficient numbers of candidates who have been certified in Puerto Rico and/or another U.S. territory and who were directly impacted by Hurricane Maria to teach in New York State.

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

As a result of the category 5 Hurricane that made landfall in Puerto Rico on September 20, 2017, we are anticipating an influx of individuals who have been displaced from Puerto Rico and/or another U.S. territory as a result of Hurricane Maria to teach in New York State. This temporary certificate will be available for those who provide evidence that they hold a valid certificate or authorization to teach from Puerto Rico and/or another U.S. territory affected by Hurricane Maria to teach in New York for a temporary period of time. The Department also anticipates that many children from Puerto Rico and other U.S. territories will come to New York (possibly staying with family who reside in New York) and enroll in New York State public schools and/or BOCES.

The expectation is that many of these students may not be fluent in English, and the Department wants to ensure that there are a sufficient number of certified teachers capable of teaching and supporting these students so that their education can continue over the course of the next several months.

Proposed Amendment

The Department is proposing to add a new Section 80-5.26 to the Regulations to allow for a temporary certificate for teachers who have been displaced from Puerto Rico and/or other U.S. territories as a result of Hurricane Maria to teach in New York if they meet the following requirements:

1. The candidate holds a certificate or authorization to teach from Puerto Rico and/or another U.S. territory prior to Hurricane Maria and who, as a result of the hurricane, has relocated to NY;
   - They must provide satisfactory evidence of such certificate or equivalent authorization, or provide verification of such certificate from the Department of Education of such U.S. territory, or the equivalent thereof, or a notarized attestation that such individual is certified;
   - They must also provide satisfactory evidence of employment, such as recent pay stubs or W-2 forms, from a public school in Puerto Rico or another U.S. territory affected by Hurricane Maria in a position that is equivalent to the title and type of certificate sought;
   - Meet the general requirements for certificates prescribed in Subpart 80-1 (including all workshops and a criminal history check); and
   - A commitment of employment from a school district or BOCES for one year of employment as a teacher in the area of the certificate sought (including a plan for mentoring from the school district).

The Department recognizes that these candidates may have difficulty obtaining a copy of their certificate and/or proof of employment, therefore, the regulations have allowed for certain alternatives that candidates may use to show proof of certification and employment. However, the Department will be working with the Puerto Rico Department of Education to verify that the candidate has the appropriate certification, to the extent possible, through the Department of Education’s online verification system.

This temporary certificate is valid until June 30, 2018 and would allow the teacher to work in a public school or BOCES for the remainder of the 2017-2018 school year. This temporary certificate is not renewable.

However, during this time, teachers from Puerto Rico may pursue a New York State initial teacher certificate through the existing reciprocity pathway provided for in Section 80-5.8 of the Commissioner’s Regulations, which allows certified teachers from other states or U.S. territories to obtain a New York certification if they have at least three years of experience in a public school in another state or territory and the candidates received ratings of effective or highly effective or the substantial equivalent during each of his/her three most recent years of experience. In addition, these candidates must complete the required workshops and receive fingerprint clearance.

If they do not have three years of teaching experience they may also choose to pursue a conditional initial certificate, as set forth in Section 80-5.17 of the Regulations which requires that candidates meet all requirements for an Initial Certificate (including a passing score on the EAS and any required CSTs). The Conditional Initial certificate allows candidates to work in a school district for one year while they complete the edTPA requirement and gain their Initial Certificate.

3. COSTS:

The proposed amendment does not impose any costs on those pursuing this temporary certificate, and/or the New York State school districts/BOCES who wish to hire these individuals.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment seeks to address the specific disaster caused by Hurricane Maria in Puerto Rico and other U.S. territories. In anticipation of the needs of children from the affected areas enrolling in New York Schools, the Department is proposing that this temporary certificate to address the increased need for teachers to teach these children, where many will be ELs.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed amendment is to provide a temporary certificate for teachers who have been displaced from Puerto Rico and/or another U.S. territory as a result of Hurricane Maria to teach in New York State. This temporary certificate will be available for those who provide evidence that they hold a valid certificate or authorization to teach from Puerto Rico and/or another U.S. territory affected by Hurricane Maria to teach in a public school in Puerto Rico or another U.S. territory. The candidate must also complete the required workshops and have a fingerprint clearance, and a commitment of employment from a school district or BOCES in New York.

Because it is evident from the nature of the proposed amendment 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.

Assessment of Public Comment

Since publication of the Notice of Emergency Adoption and Proposed Rule Making in the State Register on November 1, 2017, the State Education Department (SED) received the following comments on the proposed amendment. Below is an assessment of the public comment received:

1. COMMENT:

One commenter agrees with the Department’s proposal to provide qualified teachers displaced from Puerto Rico with a temporary certificate to teach in New York. However, the commenter recommends that these candidates should be allowed to complete the DASA training online and that the certificate should be valid until June 2019 rather than 2018.

DEPARTMENT RESPONSE:

In response to the recommendation that candidates from Puerto Rico applying for a temporary certificate be allowed to complete DASA training online, please note that while 6 clock hours of DASA training is required to obtain a certificate in the classroom teaching service, only 3 of those hours are required to be face-to-face. Therefore, 3 may be completed in an online format.

In response to the recommendation that certification be extended until June 2019, the Department believes that the current sunset date of June 2018 is sufficient to address any immediate teaching shortages directly related to the hurricane and will allow sufficient time for those who are temporarily certified through this regulation to obtain the documentation necessary to pursue their Initial certificate.

2. COMMENT:

Another commenter suggested that the temporary certificate for teachers displaced in Puerto Rico be extended until June 2019 because after the completion of paper work and applying for a job there would not realistically be enough time to find employment.
DEPARTMENT RESPONSE:
Please see answer to COMMENT #1 above. In order to obtain a temporary certificate under this regulation, the candidate must already have an offer of employment to fill an immediate need from a school district or BOCES. Moreover, the purpose of this regulation is to fill immediate employment needs resulting from Hurricane Maria and therefore it was time limited.

EMERGENCY/PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Biological Products in the Profession of Pharmacy

Filing No. 1075
Filing Date: 2017-12-12
Effective Date: 2017-12-12

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

Proposed Action: Amendment of sections 29.7 and 63.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6509(9), 6802, 6810 and 6816-a; L. 2017, ch. 357

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Chapter 357 of the Laws of 2017 (Chapter 357), which amended the Education Law by defining “biological product” and “interchangeable biological product” and establishing the requirements for both the substitution of a biological product and the appropriate method of communication by the pharmacist to the prescriber to notify him or her of the substitution of the biological product dispensed, effective October 23, 2017. Pursuant to Chapter 357, a “biological product” means a biological product as defined in subsection (i) of section 351 of the Public Health Service Act, 42 U.S.C. section 262(i) and an “interchangeable biological product” means a biological product licensed by the United States Food and Drug Administration (FDA) pursuant to 21 U.S.C. section 355(c)(4)(A) as set forth in the latest edition or supplement of the United States Food and Drug Administration Lists of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations, sometimes referred to as the “Purple Book,” or a biological product determined by the United States Food and Drug Administration to be therapeutically equivalent as set forth in the latest edition or supplement of the United States Food and Drug Administration Approved Drug Products with Therapeutic Equivalence Evaluations, sometimes referred to as the “Orange Book.” Chapter 357 further requires that, notwithstanding any other law, when an interchangeable biological product is not available and the biological product originally prescribed is available and the pharmacist agrees to dispense the prescribed biological product for a price that will not exceed the price that would have been charged for the interchangeable biological product if it had been available, substitution of an interchangeable biological product will not be required. If the interchangeable biological product is not available and a medical emergency situation, which for purposes of Chapter 357 is defined as any condition requiring alleviation of severe pain or which threatens to cause disability or take life if not promptly treated, exists, then the pharmacist may dispense the prescribed biological product at his or her regular price. In such instances the pharmacist must record the date, hour and nature of the medical emergency on the back of the prescription and keep a copy of all such prescriptions. Chapter 357 also requires that the prescriber inform the patient whether he or she has prescribed a brand name or its generic equivalent drug product or interchangeable biological product.

Prior to Chapter 357, New York State law permitted and established requirements for the substitution by pharmacists of generic drugs from their branded counterparts, but did not allow for the substitution of biological products. Chapter 357 updated the law to reflect the growing market of biological products and allows for the substitution of an FDA designated interchangeable biological product by a pharmacist when not prohibited by the prescriber. By permitting the substitution of biological products, when the specified requirements for such substitutions are met, Chapter 357 furthered the public health by improving access to these products. Therefore, it is imperative that the requirements for these biological products substitutions be implemented as soon as possible.
the Commissioner of Education is amended, as follows:

(g) . . .
(1) . . .
(2) . . .
(3) . . .
(4) . . .
(5) . . .
(6) . . .
(7) . . .
(16) . . .
(i) . . .
(ii) . . .
(17) . . .
(i) . . .
(ii) . . .
(18) . . .
(19) . . .
(20) . . .
(21) Aiding and abetting an unlicensed person to dispense drugs.
(i) . . .
(a) . . .
(b) . . .
(c) . . .
(d) . . .
(e) . . .
(f) . . .
(g) . . .
(h) . . .
(i) . . .
(j) . . .
(ii) . . .
(iii) . . .
(iv) . . .
(v) . . .
(vi) . . .
(vii) . . .
(viii) . . .
(b) Unlicensed persons shall not be authorized to:
(1) . . .
(2) . . .
(3) make determinations of the therapeutic equivalency as such determinations apply to generic substitution or interchangeable biological product substitution;
(4) . . .
(5) . . .
(6) . . .
(7) . . .
(c) . . .
2. Paragraph (7) of subdivision (a) of section 63.6 of the Regulations of the Commissioner of Education is amended, as follows:
(a) General provisions.
(1) . . .
(2) . . .
(3) . . .
(4) . . .
(5) . . .
(6) . . .
(7) Electronic prescriptions.
(i) . . .
(a) . . .
(b) . . .
(c) . . .
(ii) A pharmacist may, based upon his or her professional judgment, accept an electronic prescription from a prescriber, to the pharmacy of the patient’s choice, subject to the following requirements:
(a) . . .
(b) . . .
(c) . . .
(d) . . .
(e) such prescriptions shall be processed in accordance with the requirements of section 29.7 of this Title, provided, however, that prescriptions for controlled substances shall be filled in accordance with the requirements of section 29.7 of this Title, provided, however, that prescriptions for controlled substances shall be filled in accordance with the requirements of article 33 of the Public Health Law; and
(i) in accepting an electronic prescription, the pharmacist shall be subject to the applicable requirements of Part 29 of this Title relating to professional conduct, including but not limited to section 29.1(b)(2) and (3) of this Title, such prescriptions shall be processed in accordance with the requirements of section 29.7 of this Title, provided, however, that prescriptions for controlled substances shall be filled in accordance with the requirements of article 33 of the Public Health Law; and
(g) in accepting an electronic prescription, the pharmacist shall be subject to the applicable requirements of Part 29 of this Title relating to professional conduct, including but not limited to section 29.1(b)(2) and (3) of this Title.
(iii) . . .
(iv) . . .
(v) . . .
(vi) . . .
(vii) . . .
(viii) . . .
3. Clause (c) of subparagraph (ii) of paragraph (8) of subdivision (b) of section 63.6 of the Regulations of the Commissioner of Education is amended, as follows:
(b) Pharmacies.
(1) . . .
(2) . . .
(3) . . .
(4) . . .
(5) . . .
(6) . . .
(i) . . .
(a) . . .
(b) . . .
(c) . . .
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(f) . . .
(g) . . .
(h) . . .
(i) . . .
(ii) . . .
(a) . . .
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(g) . . .
(h) . . .
(i) . . .
(ii) Off-premises delivery. For a prescription that is delivered to the patient or the person authorized to act on behalf of the patient off the premises of the pharmacy through mail delivery, a delivery service or otherwise, the pharmacist or pharmacy intern shall meet the requirements of this subparagraph.
Biological products are regulated by the United States Food and Drug Administration (FDA) and are used to diagnose, prevent, treat and cure diseases. Biological products are generally large complex molecules, produced through biotechnology in living systems such as a microorganism from plant or animal cells, making them more difficult to characterize than small molecule drugs. Currently, there are over 200 biological products approved by the FDA for use, including monoclonal antibodies, vaccines, and proteins. Biological products are used to treat patients with complex chronic disease and/or critically ill patients, including, but not limited to, cancer, heart disease, arthritis, multiple sclerosis, and HIV/AIDS.

Simple biological products, already approved by FDA, are called reference products which are the products against which a proposed biosimilar product is compared. Products designated by the FDA as biosimilar are highly similar to, and have no clinically meaningful differences from, an existing FDA-approved reference product. Biosimilar products are specifically prescribed by a practitioner and should not be substituted for a reference product.

A biosimilar product may be designated by the FDA as an interchangeable biological if it is biosimilar to the reference product, and has proven that it can be expected to produce the same clinical result as the reference product in any given patient. In addition, it must be determined that it can be expected to produce the same clinical result as the reference product in any given patient. An interchangeable biological product may be substituted for the reference product without the involvement of the prescriber.

Prior to Chapter 357, New York State law permitted and established requirements for the substitution by pharmacists of generic drugs from the same therapeutic class but different manufacturers. Biological products. Chapter 357 updated the law to reflect the growing market of biological products and allows for the substitution of an FDA designated interchangeable biological product by a pharmacist when not prohibited by the prescriber.

The proposed amendment of subdivision (a) of section 29.7 of the Rules of the Board of Regents adds the failure to identify an interchangeable biological product dispensed on a prescription by writing the name of the manufacturer and of the distributor, if different, on the prescription and on the label, except as otherwise provided in Education Law section 6816-(3)(c), to the unprofessional conduct special provisions for the profession of pharmacy. The proposed amendment also prohibits unlicensed persons from making determinations of the therapeutic equivalency as such determinations apply to interchangeable biological product substitution.

Recent amendments to section 63.6 of the Regulations of the Commissioner of Education provides that a pharmacist may, based upon his or her professional judgment, accept an electronic prescription from a prescriber, to the pharmacy of the patient’s choice except when the prescriber inserts an electronic direction to dispense the drug as written, otherwise, the prescriber’s electronic signature shall designate approval of substitution by a pharmacist of an interchangeable biological product. The proposed amendment further provides that notwithstanding any other provision of section 63.6 or any other law to the contrary, when an interchangeable biological product is not available and the biological product originally prescribed is available, the pharmacist agrees to dispense the prescribed biological product for a price that will not exceed the price that would have been charged for the interchangeable biological substitute had it been available, substitution of an interchangeable biological product will not be required. In addition, the proposed amendment provides that if the interchangeable biological product is not available and a medical emergency exists, then the pharmacist may dispense the prescribed biological product at his or her regular price. The proposed amendment also requires that, in such instances, the pharmacist must record the date, hour and nature of the medical emergency on the back of the prescription and keep a copy of all such prescriptions.

The proposed amendment of clause (c) of subparagraph (ii) of paragraph (b) of subdivision (a) of section 63.6 of the Regulations of the Commissioner of Education includes substitution of interchangeable biological products along with generic substitutions in the off-premise counseling requirements. The proposed amendment clarifies that permitted substitution of an interchangeable biological product is not a change in prescribed therapy and does not require the additional patient notifications and counseling that result from a prescriber approved alternative therapy.

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 Chapter 357. The proposed amendment defines the terms “biological product” and “interchangeable biological product.” The proposed amendment also sets forth the conditions under which the substitution of a biological product is required and establishes the appropriate method of

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 March 11, 2018.

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

Subdivision (9) of section 6509 of the Education Law authorizes the Board of Regents to define professional conduct in the professions.

Section 6810 of the Education Law, as amended by Chapter 357 of the Laws of 2017, establishes the conditions under which the substitution of a biological product is required and requires the prescriber to inform the patient as to whether he or she has prescribed a brand name or interchangeable biological product.

Section 6816-a of the Education Law, as amended by Chapter 357 of the Laws of 2017, establishes the conditions under which the substitution of a biological product is required and the appropriate method of communication by the pharmacist to the prescriber notifying the prescriber of the substitution of the biological product dispensed.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes that the Department shall supervise the regulation of the practice of the professions for the benefit of the public. The proposed amendment will conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to Chapter 357 of the Laws of 2017 (Chapter 357), which amended the Education Law by adding definitions for the terms “biological product” and “interchangeable biological product”, effective October 23, 2017. Chapter 357 also amended the Education Law to set forth the conditions under which the substitution of a biological product is required and established the appropriate method of communication by the pharmacist to the prescriber notifying the prescriber of the substitution of the biological product dispensed.

Biological products are regulated by the United States Food and Drug Administration (FDA) and are used to diagnose, prevent, treat and cure
communication by the pharmacist to the prescriber notifying the prescriber of the substitution of the biological product dispensed.

Additionally, the proposed amendment adds the failure to identify an interchangeable biological product dispensed on a prescription by writing the name of the manufacturer and of the distributor, if different, on the prescription and on the label, except as otherwise provided in Education Law section 6816-a(3)(c), to the unprofessional conduct special provisions for the profession of pharmacy. The proposed amendment also prohibits unlicensed persons from making determinations of the therapeutic equivalency as such determinations apply to interchangeable biological product substitution.

4. COSTS:

The proposed amendment imposes no additional costs on the State or local governments or the regulatory agency.

(a) Costs to State government. There are no additional costs to State government.
(b) Costs to local government. There are no additional costs to local government.
(c) Costs to private regulated parties. There are no additional costs to private regulated parties.
(d) Costs to the regulatory agency. There are no additional costs to the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment of subdivision (a) of section 29.7 of the Rules of the Board of Regents adds the failure to identify an interchangeable biological product dispensed on a prescription by writing the name of the manufacturer and of the distributor, if different, on the prescription and on the label, except as otherwise provided in Education Law section 6816-a(3)(c), to the unprofessional conduct special provisions for the profession of pharmacy. This is already the standard for a generic product dispensed on a prescription. Thus, the Department does not anticipate that regulated parties will encounter any challenges with complying with this proposed requirement with respect to an interchangeable biological product dispensed on a prescription.

The proposed amendment of paragraph (7) of subdivision (a) of section 63.6 of the Regulations of the Commissioner of Education provides that a pharmacist may, based upon his or her professional judgment, accept an electronic prescription from a prescriber, to the pharmacy of the patient’s choice except when the prescriber inserts an electronic direction to dispense the drug as written, otherwise, the prescriber’s electronic signature shall designate approval of substitution by a pharmacist of an interchangeable biological product. The proposed amendment further provides that notwithstanding any other provision of section 63.6 or any other law to the contrary, when an interchangeable biological product is not available and the biological product originally prescribed is available and the pharmacist agrees to dispense the prescribed biological product for a price that will not exceed the price that would have been charged for the interchangeable biological substitute had it been available, substitution of an interchangeable biological product will not be required. In addition, the proposed amendment provides that if the interchangeable biological product dispensed at a price that does not exceed the price that would have been charged for the available biological product, the pharmacist may dispense the prescribed biological product at his or her regular price. The proposed amendment also requires that, in such instances, the pharmacist must record the date, hour and nature of the medical emergency on the back of the prescription and keep a copy of all such prescriptions. This process is the standard used when a brand name medication is dispensed due to generic medication unavailability or if a medical emergency exists. The Department does not anticipate that regulated parties will encounter any challenges with complying with this proposed requirement with respect to an interchangeable biological product.

7. DUPLICATION:

The proposed amendment does not duplicate any other existing State or federal requirements and is necessary to implement Chapter 357.

8. ALTERNATIVES:

The proposed amendment is necessary to implement Chapter 357, which amended the Education Law by adding definitions for the terms “biological product” and “interchangeable biological product”, setting forth the conditions under which the substitution of a biological product is required and establishing the appropriate method of communication by the pharmacist to the prescriber notifying the prescriber of the substitution of the biological product dispensed. There are no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment conforms the definition for biological and interchangeable biological product with federal standards outlined in the Biologics Price Competition and Innovation Act of 2009 which amended the Public Health Services Act. The proposed amendment does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to Chapter 357. It is anticipated that the regulated parties will be able to comply with the proposed amendments by the effective date.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to implement Chapter 357 of the Laws of 2017 (Chapter 357), which amended the Education Law by adding definitions for the terms “biological product” and “interchangeable biological product”, effective October 23, 2017. Chapter 357 also amended the Education Law to set forth the conditions under which the substitution of a biological product is required and established the appropriate method of communication by the pharmacist to the prescriber of the substitution of the biological product dispensed.

Biological products are regulated by the United States Food and Drug Administration (FDA) and are used to diagnose, prevent, treat and cure diseases. Biological products are generally large complex molecules, produced through biotechnology in living systems such as a microorganism from plant or animal cells, making them more difficult to characterize than small molecule drugs. Currently, there are over 200 biological products approved by the FDA for use, including monoclonal antibodies, vaccines, and proteins. Biological products are used to treat patients with cancer, chronic diseases, certain inflammatory diseases but not limited to, cancer, heart disease, arthritis, multiple sclerosis, and HIV/AIDS.

Single biological products, already approved by FDA, are called reference products which are the products against which new biological products will be compared. Products approved by the FDA as biosimilar are highly similar to, and have no clinically meaningful differences from, an existing FDA-approved reference product. Biosimilar products are specifically prescribed by a practitioner and should not be substituted for a reference product.

A biosimilar product may be designated by the FDA as an interchangeable biological if it is biosimilar to the reference product, and has proven that it can be expected to produce the same clinical result as the reference product in any given patient. In addition, to be determined to be an interchangeable biological product, it must be shown that the biological product that is administered more than once to an individual, the risk, in terms of safety or diminished efficacy of alternating or switching between use of the biological product and the reference product, is not greater than the risk of using the reference product without such alteration or switch. An interchangeable product may be substituted for the reference product without the involvement of the prescriber.

Prior to Chapter 357, New York State law permitted and established requirements for the substitution by pharmacists of generic drugs from their branded counterparts, but did not allow for the substitution of biological products. Chapter 357 amended the Public Health Services Act. The proposed amendment does not exceed any minimum federal standards for the same or similar subject areas. The proposed amendment is necessary to conform the Rules of the Board of Regents to the unprofessional conduct special provisions for the profession of pharmacy. The proposed amendment also prohibits unlicensed persons from making determinations of the therapeutic equivalency as such determinations apply to interchangeable biological product substitution.

The proposed amendment of subdivision (a) of section 29.7 of the Rules of the Board of Regents adds the failure to identify an interchangeable biological product dispensed on a prescription by writing the name of the manufacturer and of the distributor, if different, on the prescription and on the label, except as otherwise provided in Education Law section 6816-a(3)(c), to the unprofessional conduct special provisions for the profession of pharmacy. The proposed amendment adds the failure to identify an interchangeable biological product dispensed on a prescription by writing the name of the manufacturer and of the distributor, if different, on the prescription and on the label, except as otherwise provided in Education Law section 6816-a(3)(c), to the unprofessional conduct special provisions for the profession of pharmacy. The proposed amendment does not duplicate any other existing State or federal requirements and is necessary to implement Chapter 357.
The proposed amendment of clause (c) of subparagraph (ii) of paragraph (8) of subdivision (b) of section 63.6 of the Regulations of the Commissioner of Education defines interchangeable biological product products along with generic substitutions in the off-premise counseling requirements. The proposed amendment clarifies that permitted substitution of an interchangeable biological product is not a change in prescribed therapy, and does not require the additional patient notification and counseling that result from a prescriber approved alternative therapy.

The proposed amendment does not impose any additional costs on regulated parties beyond those required by statute. The proposed amendment adds the failure to identify an interchangeable biological product dispensed on a prescription by writing the name of the manufacturer and of the distributor, if different, on the prescription and on the label, except as otherwise provided in Education Law section 6816-a(3)(c), to the unprofessional conduct special provisions for the profession of pharmacy. This is in addition to the standard for a generic product dispensed on a prescription. Thus, the Department does not anticipate that regulated parties will encounter any challenges with complying with this proposed requirement with respect to an interchangeable biological product dispensed on a prescription.

The proposed amendment also provides that a pharmacist may, based upon his or her professional judgment, accept an electronic prescription from a prescriber, to the pharmacy of the patient’s choice except when the prescriber inserts an electronic direction to dispense the drug as written, otherwise, the prescriber’s electronic signature shall designate approval of substitution by a pharmacist of an interchangeable biological product. The proposed amendment further provides that notwithstanding any other provision of section 63.6 or any other law to the contrary, when an interchangeable biological product is not available and the biological product originally prescribed is available and the pharmacist agrees to dispense the prescribed biological product for a price that will not exceed the price that would have been charged for the interchangeable biological substitute had it been available, substitution of an interchangeable biological product will not be required. In addition, the proposed amendment provides that if the interchangeable biological product is not available and a medical emergency exists, then the pharmacist may dispense the prescribed biological product at his or her regular price. The proposed amendment also requires that, in such instances, the pharmacist must record the date, hour and nature of the medical emergency on the back of the prescription and keep a copy of all such prescriptions. This process is the standard used when a brand name medication is dispensed due to generic medication unavailability or if a medical emergency exists. The Department does not anticipate that regulated parties will encounter any challenges with complying with this proposed requirement with respect to an interchangeable biological product. The Department anticipates that the potential increased costs to complying with these proposed amendment’s requirements will be minimal.

The proposed amendment does not impose any new reporting, record-keeping, or other compliance requirements on local governments or have any adverse economic impact on small businesses. 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 job impact statement is not required and one has not been prepared.

**RULE MAKING**

**EMERGENCY/PROPOSED**

**RURAL AREA FLEXIBILITY ANALYSIS**

The proposed rule is necessary to implement Chapter 357 of the Laws of 2017 (“Chapter 357”), which amended the Education Law to define the terms “biological product” and “interchangeable biological product”, set forth the conditions under which the substitution of a biological product is required, and establish the appropriate method of communication by the pharmacist to the prescriber notifying the prescriber of the substitution of the biological product dispensed, effective October 23, 2017. Additionally, the proposed amendment adds the failure to identify an interchangeable biological product dispensed on a prescription by writing the name of the manufacturer and of the distributor, if different, on the prescription and on the label, except as otherwise provided in Education Law section 6816-a(3)(c), to the unprofessional conduct special provisions for the profession of pharmacy. The proposed amendment also prohibits unlicensed persons from making determinations of the therapeutic equivalency as such determinations apply to interchangeable biological product substitution. The proposed amendment will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

**SUPERINTENDENT DETERMINATION FOR CERTAIN STUDENTS WITH DISABILITIES TO GRADUATE WITH A LOCAL DIPLOMA**

**FILING DATE:** 2017-12-12

**EFFECTIVE DATE:** 2017-12-12

**PURSUANT TO THE PROVISIONS OF THE STATE ADMINISTRATIVE PROCEDURE ACT, NOTICE IS HEREBY GIVEN OF THE FOLLOWING ACTION:**

**PROPOSED ACTION:** Amendment of section 100.5(d)(12) of Title 8 NYCRR.

**STATUTORY AUTHORITY:** Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1), (2), 308(not subdivided), 309(not subdivided), 320(3) and (4)

**FINDING OF NEECESSITY FOR EMERGENCY RULE:** Preservation of general welfare.

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Regents policy to permit students with disabilities to meet the Regents ELA and/or mathematics examinations eligibility conditions for the superintendent determination option by completing the required number of local credits in local or non-public school. The proposed rule would allow students with disabilities to meet the Regents ELA and/or mathematics examination eligibility conditions for the superintendent determination option by completing the required number of local credits in local or non-public school. The proposed rule would allow students with disabilities to meet the Regents ELA and/or mathematics examination eligibility conditions for the superintendent determination option by completing the required number of local credits in local or non-public school.

**Specific reasons underlying the finding of necessity:** The proposed amendment is necessary to implement Regents policy to permit students with disabilities to meet the Regents ELA and/or mathematics examinations eligibility conditions for the superintendent determination option by completing the required number of local credits in local or non-public school. The proposed rule would allow students with disabilities to meet the Regents ELA and/or mathematics examination eligibility conditions for the superintendent determination option by completing the required number of local credits in local or non-public school.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the March 12-13, 2018 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the March meeting, would be March 28, 2017, the date a Notice of Adoption would be published in the State Register. However, the proposed rule would allow students with disabilities to meet the Regents ELA and/or mathematics examinations eligibility conditions for the superintendent determination option by completing the required number of local credits in local or non-public school. The proposed rule would allow students with disabilities to meet the Regents ELA and/or mathematics examinations eligibility conditions for the superintendent determination option by completing the required number of local credits in local or non-public school.

Therefore, emergency action is necessary at the December 2017
Superintendent determination for certain students with disabilities to graduate with a local diploma.

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

**Text of emergency/proposed rule:**
1. Paragraph (12) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective December 12, 2017, as follows:

   (12) Superintendent determination pathway for certain students with disabilities for eligibility for a local diploma.

   (i) For purposes of this paragraph only, superintendent shall mean the superintendent of a school district or the principal, head of school, or their equivalent, of a charter school or nonpublic school, as applicable.

   (ii) School districts, registered nonpublic high schools and charter schools shall ensure that every student who is identified as a student with a disability as defined in Education Law section 4401(1) and section 200.1(rz) of this Title and who does not meet the assessment requirements for graduation through the existing appeal options, including the compensatory score option or the 55-64 low pass safety net option available under this section but who is otherwise eligible to graduate in June 2016 and thereafter shall be considered for a local diploma through the superintendent determination pathway in accordance with the requirements of this paragraph, provided that the student:

   (a) has a current individualized education program and is receiving special education programs and/or related services pursuant to Education Law section 4401(1) and section 200.1(rz) of this Title;

   (b) took the English Regents examination required for graduation pursuant to this subdivision and achieved a minimum score of 55 or successfully appealed a score of between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision, except as otherwise provided in subparagraph (a) of this paragraph;

   (c) took a mathematics Regents examination required for graduation pursuant to this subdivision and achieved a minimum score of 55 or successfully appealed a score of between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision, except as otherwise provided in subparagraph (b) of this paragraph;

   (d) participated in the remaining Regents examinations required for graduation pursuant to clauses (a)(5)(i), (c), (d), (e) and (f) of this section, but was unable to achieve a minimum score of 55 on one or more of the remaining assessments required for graduation or did not initiate an appeal of a score of between 52 and 54 on one or more such examinations pursuant to paragraph (7) of this subdivision, or was unable to use the compensatory score option for one or more such examinations pursuant to clause (7)(vii)(c) of this subdivision; and

   (e) has earned the required course credits pursuant to this subdivision and passed, in accordance with district policy, all courses required for graduation.

   (iii) For each eligible student under this paragraph, the superintendent shall conduct a review to determine whether the student has otherwise demonstrated proficiency in the knowledge, skills and abilities in the subject area(s) where the student was not able to demonstrate his/her proficiency of the State’s learning standards as measured by the corresponding Regents examination(s) and document such determination in accordance with the following procedures:

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

   (b) the superintendent shall consider the evidence that demonstrates that the student actively participated in the Regents examination(s) for the subject area(s) under review; and

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

   (d) the superintendent shall, as soon as practicable, provide each school principal or parent or person in parental relation to the student, or a copy of the completed form and written notification of the superintendent’s determination, and place a copy of the completed form in the student’s record.

   (1) Where the superintendent determines that the student has not met the requirements for graduation pursuant to this paragraph, the written notice shall inform the student and parent or person in parental relation to the student that the student has the right to attend school until receipt of a local or Regents diploma; or to the end of the school year in which the student turns age 21, whichever shall occur first.

   (2) Where the superintendent determines that the student has met the requirements for graduation pursuant to this paragraph, the parent shall provide a written request to the commissioner for the receipt of a local diploma or Regents diploma in accordance with section 100.5(a)(5)(ii) of this Title indicating that the student is not eligible to receive a free appropriate public education after graduation with the receipt of the local diploma pursuant to this paragraph, and (v) the superintendent shall not forward the student's record to the school of his or her choice until the superintendent determines that the student has met the requirements for graduation pursuant to this paragraph.

   (iv) On or after October 18, 2016, a superintendent shall only make a determination under this paragraph based upon receipt of a written request from an eligible student’s parent or guardian. Such request shall be submitted in writing to the student’s school principal or chairperson of the district’s committee on special education. A written request received by the school principal, chairperson of the district’s committee on special education, or any other employee of the school as applicable, shall be forwarded to the superintendent immediately upon receipt.

   (v) On or after December 12, 2017, a student who was unable to achieve a minimum score of 55 or did not initiate an appeal of a score of between 52 and 54 on the English and/or mathematics Regents exams shall be considered an eligible student for the superintendent determination pathway pursuant to this paragraph, provided that the student has completed the requirements for the New York State career development and occupational studies commencement credential pursuant to section 100.6(b) of this Part.

   (a) For students with disabilities who are otherwise eligible to graduate in either the 2017-2018 school year or the 2018-2019 school year only, the district, registered nonpublic high school or charter school may award the career development and occupational studies commencement credential to a student who has not met all of the requirements in section 100.6(b)(3)(ii) of this Part, for purposes of eligibility for the superintendent determination pathway pursuant to this paragraph, provided that the school principal, in consultation with relevant faculty, has determined that the student has otherwise demonstrated knowledge and skills relating to the commencement level career development and occupational studies learning standards. The principal must have evidence that the student has successfully completed relevant instructional and work-based learning activities during the student’s secondary school years that demonstrate the student has readiness skills for entry-level employment. Students who are awarded the career development and occupational studies commencement credential pursuant to this clause may not use such credential to meet the requirements set forth in section 100.5(d)(11) of this Part for the career development and occupational studies pathway to a local Regents diploma;

   (b) The superintendent shall, in accordance with the requirements of subparagraph (iii) of this paragraph, conduct a review to determine whether each student has otherwise demonstrated proficiency in the knowledge, skills and abilities in English language arts and/or mathematics, in addition to reviewing any other subject areas required for graduation where the student was not able to demonstrate higher proficiency of the State’s learning standards as measured by the corresponding Regents examination pursuant to clause (ii)(d) of this paragraph.

   **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 March 11, 2018.

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

**Data, views or arguments may be submitted to:**
Christopher Suriano, New York State Education Department, 89 Washington Avenue, Room 309 EB, Albany, NY 12234, (518) 473-2878, email: spedpubliccomment@nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

   All students with disabilities must be held to high expectations and be provided meaningful opportunities to participate and progress in the general education curriculum to prepare them to graduate with a regular high school diploma. The majority of students with disabilities can meet the State’s learning standards for graduation. However, there are some students who, because of their disabilities, are unable to demonstrate their proficiency on State-wide State assessments, even with test accommodations. For these students, the State provided a superintendent determination option for eligible students to graduate with a local diploma, beginning in June 2016 and thereafter. Under current regulations, to be eligible for the superintendent determination option to graduate with a local diploma, a student with a disability must have earned a minimum score of 55 on both the English Language Arts (ELA) and mathematics Regents examinations or successfully appealed a score between 52 and 54.

   The proposed rule would, on or after December 12, 2017, allow students with disabilities who have not earned a minimum score of 55 on the ELA and/or mathematics Regents examinations or did not initiate an appeal of a score between 52 and 54 to meet the ELA and/or mathematics Regents examinations eligibility conditions for the superintendent determination option by completing the requirements for the New York State Career Development and Occupational Studies (CDOS) Commencement Credential. It would also allow for the superintendent determination option to be used for students with disabilities who are otherwise eligible to graduate during the 2017-18 and 2018-19 school years, school districts, and nonpublic high schools and charter schools to award the CDOS Commencement Credential to a student with a disability who has not fully met all of the CDOS requirements, for purposes of eligibility for the superintendent determination option, provided that the student has successfully completed relevant instructional and work-based learning activities during the student’s secondary school years that demonstrates the student has readiness skills for entry-level employment. However, in the long term, the proposed amendment is expected to be a cost-saving measure in that it will boost the graduation rate, allowing students to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

4. COSTS:

   (a) Costs to State: none.

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

5. LOCAL GOVERNMENT MANDATES:

   The proposed amendment would require, on or after December 12, 2017 (the effective date of the revised rule), districts to conduct a superintendent determination review for students with disabilities who met the eligibility conditions for the superintendent determination option by completing the requirements for the CDOS Commencement Credential. It would also allow for the superintendent determination option to be used for students with disabilities who are otherwise eligible to graduate during the 2017-18 and 2018-19 school years, school districts, and nonpublic high schools and charter schools to award the CDOS Commencement Credential to a student with a disability who has not fully met all of the CDOS requirements, for purposes of eligibility for the superintendent determination option, provided that the school principal, in consultation with relevant faculty and a career and technical education teacher, has determined that the student has otherwise demonstrated knowledge and skills in the commencement level CDOS learning standards.

6. PAPERWORK:

   The proposed rule does not impose any new paperwork requirements, upon local government, including school districts or BOCES beyond those already required when a superintendent makes a determination that a student has met the requirements for a local diploma.

7. DUPLICATION:

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

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

   There are no related federal standards in this area.

10. COMPLIANCE SCHEDULE:

   On or after December 12, 2017 (the effective date of the revised rule), students with disabilities who were awarded a CDOS Commencement Credential under this exception may meet the threshold eligibility conditions for the superintendent determination option by completing the requirements for the CDOS Commencement Credential. It is anticipated that regulatory parties will be able to achieve compliance with the proposed amendment by its effective date.
The proposed amendment is necessary to implement Regents policy to permit students with disabilities to meet the threshold eligibility conditions for the superintendent determination option by completing the requirements for the New York State Career Development and Occupational Studies (CDOS) Commencement Credential. In addition, the proposed rule would allow, for students with disabilities who are otherwise eligible to exit from high school in either the 2017-2018 school year or 2018-2019 school year only, a school district, charter school or nonpublic school to award the CDOS Commencement Credential to a student with a disability who has not met all of the CDOS requirements, for purposes of eligibility for the superintendent determination option, provided that the student has otherwise demonstrated knowledge and skills in the commencement level CDOS learning standards. Students who are awarded the CDOS commencement credential under this exception may not use such credential to meet the requirements for the career development and occupational studies graduation pathway option.

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.

(a) Local governments:
1. EFFECT OF RULE:
The proposed amendment applies to each of the 689 public school districts in the State, and to charter schools and nonpublic schools that are authorized to issue regular high school diplomas with respect to State assessments and high school graduation diploma requirements.

2. COMPLIANCE REQUIREMENTS:
The proposed rule would, on or after December 12, 2017, allow students with disabilities who have not earned a minimum score of 55 on the ELA and mathematics Regents exams or did not initiate an appeal of a score between 52 and 54 to meet the ELA and mathematics Regents exams examinations eligibility conditions for the superintendent determination option by completing the requirements for the CDOS Commencement Credential. For these students, the superintendent must conduct a review to determine whether such student has otherwise demonstrated proficiency in the knowledge and skills related to the CDOS learning standards sufficient for entry-level employment. Specifically, for students with disabilities who are otherwise eligible to graduate during the 2017-18 and 2018-19 school years only, the exception would allow school districts, and nonpublic high schools and charter schools to award the CDOS Commencement Credential to a student with a disability who has not met all of the CDOS requirements, for purposes of eligibility for the superintendent determination option, provided that the student has otherwise demonstrated knowledge and skills in the commencement level CDOS learning standards. The principal must have evidence that the student has readiness skills for entry-level employment. However, for students who are otherwise eligible to graduate during the 2017-18 and 2018-19 school years, the total hours of the career and technical education coursework and/or work-based learning activities may be less than the required equivalent of two units of study (216 hours).

Students who are awarded the CDOS Commencement Credential under this exception may not use such credential to meet the requirements for the career development and educational studies graduation pathway to a local or Regents diploma.

3. PROFESSIONAL SERVICES:
The proposed rule does not impose any additional professional services requirements on local governments.

4. COMPLIANCE COSTS:
It is anticipated that any costs associated with extending the population of students with disabilities that can earn a local diploma will be minimal and capable of being absorbed by districts using existing staff and resources. School districts, BOCES and registered non-publics may also incur costs for the superintendent review and with recording the evidence reviewed and the decision rendered by the superintendent in these reviews.

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

5. ECONOMIC AND LOGICAL FEASIBILITY:
The proposed amendment does not impose any new technological requirements on school districts or charter schools. Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:
The proposed amendment is necessary to implement Regents policy relating to the expansion of the available safety net options for students with disabilities to graduate with a local diploma. Because the Regents policy upon which the proposed amendment is based applies to all school districts in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt school districts from coverage by the proposed amendment. The proposed amendment does not directly impose any additional compliance requirements or costs on school districts. It is anticipated that any indirect costs associated with the proposed rule would be minimal and capable of being absorbed using existing school resources.

7. LOCAL GOVERNMENT PARTICIPATION:
Comments on the proposed rule were solicited from school districts through the offices of the districts' superintendents of each supervisory district in the State, from the chief school officers of the five big city school districts and from charter schools.
registered nonpublic high schools, it is not possible to establish differing completion or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:
Comments on the proposed rule were solicited from the Department’s Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement
The proposed amendment is necessary to implement Regents policy to permit students with disabilities to meet the threshold eligibility conditions for the superintendent determination option by completing the requirements for the New York State Career Development and Occupational Studies (CDOS) Commencement Credential. In addition, the proposed rule would allow, for students with disabilities who are otherwise eligible to exit from high school in either the 2017-2018 school year or 2018-2019 school year only, a school district, charter school or nonpublic school to award the CDOS Commencement Credential to a student with a disability who has not met all of the CDOS requirements, for purposes of eligibility for the superintendent determination option, provided that the school principal, in consultation with relevant faculty, has determined that the student has otherwise demonstrated knowledge and skills in the commencement level CDOS learning standards. Students who are awarded the CDOS commencement credential under this exception may not use such credential to meet the requirements for the career development and occupational studies graduation pathway option.

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

NOTICE OF ADOPTION

Requirements Relating to the EdTPA Teacher Certification Examination

I.D. No. EDU-39-17-00006-A
Filing No. 1073
Filing Date: 2017-12-12
Effective Date: 2017-12-27

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, 215, 3001, 3003 and 3009

Subject: Requirements relating to the edTPA teacher certification examination.

Purpose: Extend the edTPA Safety Net and Revise the Eligibility Criteria for the Multiple Measures Review Process.

Text or summary was published in the September 27, 2017 issue of the Register, I.D. No. EDU-39-17-00006-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule
As a rule that requires a RF A, RAF A or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment
Since publication of Emergency Adoption and Proposed Rule Making in the State Register on September 27, 2017, the State Education Department (SED) received several comments:

1. COMMENT:
One commenter raised a concern related to the certification exams because he/she is pursuing a teaching certificate but cannot pass the exams.

DEPARTMENT RESPONSE:
The intent behind the regulatory changes related to the edTPA is to make implementation of the exam in New York more effective and to address significant concerns raised by test takers and the field. The concerns included feedback from candidates related to the difficulty of the exam.

The recommendations of the Task Force also included actions such as eliminating the Academic Literacy Skills Test (ALST), extending the safety net for those who cannot pass the edTPA until June 30, 2018, revising the edTPA passing score, and creating a Multipurpose Measures Review Process for those candidates who fall within 2 points of the new edTPA passing score but meet certain other requirements demonstrating that they have the knowledge, skills, and abilities to step into the classroom. The new passing score on January 1, 2018, will be 38, which is lower than the current passing score of 41. Ultimately, under the recommended phase-in period, the new passing score will be a 40 beginning on January 1, 2022. In addition, the safety nets for the EdTPA and the more recently released and/or revised content specialty tests have been extended.

2. COMMENT:
Several commenters ask that the Board of Regents reconsider the decision to lower the requirements for teacher certification. The concerns raised include the negative impact this would have on students and that teachers leave the profession due to deplorable teaching conditions, not because of the exams.

DEPARTMENT RESPONSE:
The intent behind the regulatory changes related to the edTPA was not to lower the standards for teacher certification in New York, but to make the implementation of the exam in New York more effective, and to address significant concerns raised by the field. The decision to lower the edTPA cut score (as well as the process to phase in a higher cut score) was a result of the edTPA standard setting panel convened in June 2017. This panel included both P-20 and higher education stakeholders, and was geographically and demographically representative of New York State. This panel of experts ultimately recommended the new edTPA cut score, phase-in process, and cut-off for the Multiple Measures Review Process which they decided will still ensure that a teacher certification candidate possess the requisite knowledge, skills, and abilities to become a teacher of record.

3. COMMENT:
One commenter expressed frustration that the safety net exams are no longer available, that the exams are too costly, that the edTPA safety net (the ALST) is too costly, that too much time is spent studying for the exams, and that New York is facing a teacher shortage.

DEPARTMENT RESPONSE:
At this time, the safety net for the edTPA (which is the Assessment of Teaching Skills-Written [ATS-W]) is available until June 30, 2018. The safety net exams for most of the recently developed content specialty tests are still available as well, and for a detailed breakdown of the safety net dates for all content specialty tests, please see: http://www.highered.nysed.gov/ctcert/certificate/certexamsafetynet/chart.html.

4. COMMENT:
One commenter asked that the Department review and revise the pathways to obtain a teaching certificate in an additional science subject, noting that there should be an easier way for a teacher of one of the sciences to obtain an additional certificate in another science.

DEPARTMENT RESPONSE:
While this is outside the scope of the regulation change related to the edTPA, the Department is currently reviewing all certification pathways including the sciences.

5. COMMENT:
One commenter expressed concern that the Board of Regents is lowering standards and making it easier to become a teacher, but also noted that it appears that the intent is to create multiple pathways for teacher certification. The commenter was concerned that these multiple pathways do not necessarily help and that all pathways may not lead to the same quality of teacher. Last, the commenter is concerned that this could be a cause of the teacher shortage by discouraging candidates from entering the profession.

DEPARTMENT RESPONSE:
See Response to Comment #2. The intent behind the regulatory changes related to the edTPA was not to lower the standards for teacher certification in New York, but to make the implementation of the exam in New York more effective, and to address significant concerns raised by the field. In response to the “multiple pathways” concern, the Department acknowledges that there are multiple pathways that one may pursue to obtain a teaching certificate (for example, individual evaluation pathways, pathways for those with postsecondary teaching experience, and transitional program pathways). However, this flexibility was intentional because the Department recognizes that one single pathway does not fit all candidates pursuing a certificate. The Department works to ensure that each pathway leading to a certificate in the classroom teaching service leads to a certified teacher who possesses the minimum knowledge, skills, and abilities to effectively teach students in their certificate area.

6. COMMENT:
Several commenters disagree with lowering standards for teacher certification as a solution to the teacher shortage and suggest that the Department solve this problem by making it more desirable to become a teacher,
increasing teacher salaries, and creating better working conditions for teachers.

DEPARTMENT RESPONSE:
Please see response to COMMENT #2. While outside the scope of this regulation, the Department also recognizes that there are shortages in certain certification titles and is exploring ways to address these shortages.

7. COMMENT:
Several commenters disagree with the decision of the Board of Regents to lower the standards for teacher certification.

DEPARTMENT RESPONSE:
Please see response to COMMENT #2.

8. COMMENT:
One commenter disagrees with the decision of the Board of Regents to lower standards for teacher certification and suggests the creation of a pathway to allow a "visiting professional" status for accomplished and retired professionals to become teachers.

DEPARTMENT RESPONSE:
In response to the comment related to lowering the standards, please see response to COMMENT #2. In response to the suggestion of a pathway for professionals to pursue a teaching certificate, there is a Transitional G pathway available for individuals who hold a graduate degree in any subject who have had teaching experience at the college level in such subject. This pathway was formerly only open to those holding a graduate degree in a STEM subject, but the Department proposed a change at the November 2017 Board of Regents meeting to open this option up to all subjects.

9. COMMENT:
One commenter with an expired conditional initial certificate asked that the Board of Regents consider making it easier for teachers who have lost their license to regain their license, allowing good teachers to re-enter the workforce.

DEPARTMENT RESPONSE:
While this comment is outside the scope of the proposed amendment, a candidate with an expired conditional initial teaching certificate would need to re-take the applicable content specialty test and the EAS. While the candidate will also have to take the edTPA, it was not required for the conditional initial and so would not be a re-take. Lastly, the ALST is no longer a certification examination requirement and therefore this examination would not have to be re-taken.

10. COMMENT:
Several commenters expressed concern related to the process of state-to-state reciprocity of teaching certificates. The commenter argues that rather than lowering the standards for candidates entering the profession, the Department should make it easier for those with a teaching certificate and experience from another state to become a certified teacher in New York. The commenter also suggests that the Department look to other states that have exceptional standards for educators.

DEPARTMENT RESPONSE:
The Department has recently examined the endorsement pathways for individuals who hold a teaching certificate from another state who are pursuing certification in New York. If an individual has a certificate from another state and three years of teaching under such certificate in a public school (within the last five years) along with ratings of effective or highly effective, along with a bachelor’s degree and at least a 2.5 GPA, he/she may pursue endorsement of his/her teaching certificate without having to take and pass the New York State teaching certification exams.

11. COMMENT:
One commenter acknowledged that there may be a teacher shortage in some areas, but that there is a surplus of teachers in some certification areas. The commenter suggests that the Department address this issue as well as the perceived shortage.

DEPARTMENT RESPONSE:
See Response to COMMENT #6.

12. COMMENT:
One commenter suggested that the Board of Regents eliminate the edTPA and replace this requirement with more time spent in the classroom.

DEPARTMENT RESPONSE:
See Response to COMMENT #1. In addition, by request of the Board of Regents, the Department convened a Clinical Practice Workgroup that has been tasked with reviewing all requirements related to the field experience and student teaching requirements applicable to all educator preparation programs to determine if additional time is needed in the classroom. This workgroup contains both P-12 and higher education experts, faculty, teachers, and administration. The workgroup plans to have recommendations to present to the Board of Regents in early 2018.

13. COMMENT:
One commenter expressed concern that standards for teacher certification are being lowered, and that this is a continuation of bad concepts being implemented by the New York State Education Department.

DEPARTMENT RESPONSE:
See Response to COMMENT #2. One commenter does not support lessening the requirements for teacher certification and in fact supports an initiative to strengthen teacher certification requirements. The commenter explains that it is the paperwork, meetings, and "bureaucracy" that is stifling the teaching profession and pushing current teachers out of the profession.

DEPARTMENT RESPONSE:
In response to the concern that the Department is lowering standards for teacher certification, please see response to COMMENT #2. In addition, the Department has made efforts to strengthen teacher certification requirements through initiatives such as the Clinical Practice Workgroup. See Response to COMMENT #13.

15. COMMENT:
One commenter disagrees with lowering the standards for teacher certification. The commenter explained that teachers face poor public perception and a lack of respect which influences the number of individuals pursuing the profession. The commenter suggests increasing the demands for teacher certification to send the message that only the most qualified candidates can become teachers in New York.

DEPARTMENT RESPONSE:
Please see response to COMMENT #2 and COMMENT #14 above.

16. COMMENT:
One commenter explained that her daughter wishes to be a teacher, but has test anxiety and wishes there were no tests.

DEPARTMENT RESPONSE:
Please see response to COMMENT #1. In addition, NYSTCE offers alternative testing arrangements for those test takers with disabilities who would not be able to take the test under standard conditions. Please see: http://www.nystate.tea.com/TestView.aspx?f=NYCBT_RequestingAlternativeTestingArrangements.html#NYO28 for additional information about requesting alternative testing arrangements.

17. COMMENT:
One commenter suggests that the Board of Regents eliminate the edTPA because it is not practical and because too much time is spent in the classroom preparing for it.

DEPARTMENT RESPONSE:
Please see response to COMMENT #1. In addition, this was one of the concerns brought to the edTPA Task Force and considered by the Task Force, which ultimately presented final recommendations to the Board of Regents which included the regulation changes related to the edTPA cut score and implementation of the Multiple Measures Review Process.

18. COMMENT:
One commenter expressed concern that the regulation change is unfair to those who have already paid to take the tests.

DEPARTMENT RESPONSE:
See Response to COMMENT #1. These changes were made based on recommendations from the edTPA Task Force, which includes representatives from CUNY, SUNY, clcu, the Teacher Education Advisory Group, the United University Professions, the Professional Staff Congress and P-12.

19. COMMENT:
One commenter expressed concern that "dumbing down" the profession is not the way to encourage new teachers to enter the profession and encourage growth in the teaching profession. The commenter suggests that the Board of Regents and the Department determine why there is a teacher shortage and why young teachers leave the profession. The commenter suggests that the public perception of the teaching profession may be the cause.

DEPARTMENT RESPONSE:
Please see Responses to COMMENTS #2 and #6.

20. COMMENT:
One commenter expressed his/her desire to move back to New York but explains that the requirement to obtain a Master’s degree to become a certified teacher along with the cost of living in New York is prohibitive.

DEPARTMENT RESPONSE:
See Response to COMMENT #1. In addition, candidates may get an extension on their Initial Certificate for an additional five years, ultimately giving them ten years within which to complete the Master’s degree requirement. The Department believes this is a sufficient amount of time to obtain a Master’s degree.

21. COMMENT:
One commenter expressed support for the changes related to the edTPA because changes to the edTPA are needed, but expressed concern that the certification tests have hindered teacher certification including colleagues of the commenter.

DEPARTMENT RESPONSE:

To the extent that the comment is supportive, no comment is necessary. In response to the concern related to teacher certification, the work of the edTPA Task Force focused on responding to these concerns. To address these concerns, the Task Force developed a set of recommendations related to all certification exams, which were presented to the Board of Regents, and have been implemented and/or are in the process of being implemented. These recommended included actions such as eliminating the Academic Literacy Skills Test (ALST), extending the testing net for those who cannot pass the edTPA until June 30, 2018, reviewing the edTPA passing score, and creating a Multiple Measures Review Process for those candidates who fall within 2 points of the new edTPA passing score but meet certain other requirements demonstrating that they have the knowledge, skills, and abilities to step into the classroom. For the full Task Force Report, please see: https://www.regents.nysed.gov/common/regents/files/117hed2.pdf.

22. COMMENT:
One commenter expressed concern that decreasing qualifying scores (passing scores on the edTPA) is not the way to address issues in the teaching profession. The commenter suggests that the Department look at the "untapped resource" of young men and potentially creating a campaign to encourage young men to enter the profession.

DEPARTMENT RESPONSE:
It has been, and continues to be, a mission of the Department to attract as many highly qualified and diverse candidates to the educator workforce as possible. Under New York State’s ESSA Plan, the Department will be working to leverage P-20 partnerships to enhance the quality and diversity of the educator workforce.

23. COMMENT:
One commenter expressed concern that lowering the edTPA score to a 39 will not make a difference because there is no exam that can show teacher effectiveness.

DEPARTMENT RESPONSE:
The decision to phase in the edTPA cut score was a result of the edTPA standard setting panel convened in June 2017. This panel included both P-20 and higher education stakeholders, and was geographically and demographically representative of New York State. This panel of experts ultimately recommended the new edTPA cut score, phase-in process, and cut-off for the Multiple Measures Review Process which they decided will still ensure that a teacher certification candidate possess the requisite knowledge, skills, and abilities to become a teacher of record.

24. COMMENT:
One commenter expressed concern that the edTPA is very costly and time consuming, does not prove teaching ability, and the internship required in education preparation programs is enough to prove teaching effectiveness.

DEPARTMENT RESPONSE:
In response to the concerns raised related to the time and cost of the edTPA, the edTPA Task Force was convened to specifically review concerns related to all of the certification exams. Also, please see responses to COMMENTS # 1 and #3. In response to the comment related to the internship, the edTPA is meant to be embedded in teacher preparation programs, and to be completed during a student teaching placement. Rather than being redundant, the edTPA is meant to enhance and assess the skills gained during a placement.

25. COMMENT:
The Department received several comments supporting the proposed amendments.

DEPARTMENT RESPONSE:
No response is necessary because the comments were supportive.

26. COMMENT:
One commenter raised concerns related to the teacher certification process including: teacher shortage, the poor retirement system, APPR, the registration process for teachers, the cost of obtaining a Master’s degree, the cost of the edTPA, the fingerprinting process, and over-testing in schools.

DEPARTMENT RESPONSE:
In response to the teacher shortage, the Department has been working to explore ways to address the perceived shortages while maintaining the high quality of the teaching profession. In response to the concerns related to the retirement system, APPR, the registration process, the cost of obtaining a Master’s degree, the fingerprinting process, and over-testing in schools, these concerns are outside the scope of the proposed amendments.

Last, in response to the cost of the edTPA, the total cost of the certification exams was one concern addressed by the edTPA Task Force. See response to COMMENT #3.

NOTICE OF ADOPTION
Eligibility Criteria for the Tuition Assistance Program
I.D. No. EDU-39-17-00012-A
Filing No. 1071
Filing Date: 2017-12-12
Effective Date: 2017-12-27
PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of section 145-2.1 of Title 8 NYCRR.
Statutory authority: Education Law, sections 101, 207, 305, 602 and 661
Subject: Eligibility Criteria for the Tuition Assistance Program.
Purpose: Define certain terms to be used for eligibility for the Tuition Assistance Program.
Text or summary was published in the September 27, 2017 issue of the Register, I.D. No. EDU-39-17-00012-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov
Initial Review of Rule
As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION
Principal Preparation Programs and Annual Professional Performance Reviews
I.D. No. EDU-39-17-00013-A
Filing No. 1072
Filing Date: 2017-12-12
Effective Date: 2017-12-27
PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of sections 30-3.2, 30-3.5, 52.1, 52.21 and 80-3.10 of Title 8 NYCRR.
Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2) and 3012-d(4)
Subject: Principal Preparation Programs and Annual Professional Performance Reviews.
Purpose: Establishes new professional practice guidelines and expectations for principals.
Text or summary was published in the September 27, 2017 issue of the Register, I.D. No. EDU-39-17-00013-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov
Initial Review of Rule
As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.
Assessment of Public Comment
The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED
Requires Teachers to Complete a Mentoring Program During Their First Year of Teaching
I.D. No. EDU-52-17-00008-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 80-3.4 of Title 8 NYCRR.


Subject: Requires teachers to complete a mentoring program during their first year of teaching.

Purpose: Outlines the requirements for candidates seeking a professional certificate in the classroom teaching service.

Text of proposed rule: Section 80-3.4 of the Regulations of the Commissioner shall be amended to read as follows:

(a) Requirements for professional certificates in all titles in classroom teaching service, except in a specific career and technical subject within the field of agriculture, business and marketing, family and consumer sciences, health, a technical area, or a trade (grades 7 through 12).

The candidate shall meet the requirements in each of the following paragraphs:

(1) . . .

(2) Teaching experience. The candidate shall successfully complete three school years of teaching experience, or its equivalent. The candidate who completes this requirement in total or part through teaching in New York public schools shall be required to participate in a mentor program in the first [year] 180 school days of employment, as prescribed in Part 100 of this Title, unless the candidate has successfully completed two years of teaching experience prior to such teaching.

(3) . . .

(c) Requirements for professional certificates in a specific career and technical subject (grades 7 through 12). The candidate shall meet the requirements for the professional certificate by successfully completing the requirements in paragraphs (1) through (8) of this subdivision, as applicable.

(1) Option A. The requirements of this paragraph are applicable to candidates who seek a professional certificate and who hold an associate degree or its equivalent. The candidate shall meet the requirements for the professional certificate in each of the following subparagraphs:

(i) . . .

(ii) Teaching experience. The candidate shall successfully complete three school years of teaching experience, or its equivalent. The candidate who completes this requirement in total or part through teaching in New York public schools shall be required to participate in a mentor program in the first [year] 180 school days of employment, as prescribed in Part 100 of this Title, unless the candidate has successfully completed two years of teaching experience prior to such teaching.

(2) Option B. The requirements of this paragraph are applicable to candidates who seek a professional certificate and do not possess an associate degree or its equivalent. This option shall not be available in specific family and consumer science, business and marketing, and technical subject titles. The candidate shall meet the requirements in each of the following subparagraphs:

(i) . . .

(ii) Teaching experience. The candidate shall successfully complete three school years of teaching experience, or its equivalent. The candidate who completes this requirement in total or part through teaching in New York public schools shall be required to participate in a mentor program in the first [year] 180 school days of employment, as prescribed in Part 100 of this Title, unless the candidate has successfully completed two years of teaching experience prior to such teaching.

(3) Option C. The requirements of this paragraph are applicable to candidates who seek a professional certificate and who hold an associate degree or its equivalent in the career and technical field in which a certificate is sought and who have at least two years of satisfactory teaching experience, at the post-secondary level, in the certificate area to be taught or in a closely related subject area acceptable to the department. The candidate shall meet the requirements in each of the following subparagraphs:

(i) . . .

(ii) Teaching experience. The candidate shall successfully complete three school years of teaching experience, or its equivalent. The candidate who completes this requirement in total or part through teaching in New York public schools shall be required to participate in a mentor program in the first [year] 180 school days of employment, as prescribed in Part 100 of this Title, unless the candidate has successfully completed two years of teaching experience prior to such teaching.

(4) Option D. The requirements of this paragraph are applicable to candidates who seek a professional certificate and who hold a full license as a teacher issued by the department pursuant to section 126.6(f) of this Title in the career and technical field in which a certificate is sought and who have two years of satisfactory teaching experience under a full license issued by the department pursuant to section 126.6(f) of this Title in a licensed private career school in the certificate area under such license, or in a closely related subject area acceptable to the department. The candidate shall meet the requirements in each of the following subparagraphs:

(i) . . .

(ii) Teaching experience. The candidate shall successfully complete three school years of teaching experience, or its equivalent. The candidate who completes this requirement in total or part through teaching in New York public schools shall be required to participate in a mentor program in the first [year] 180 school days of employment, as prescribed in Part 100 of this Title, unless the candidate has successfully completed two years of teaching experience prior to such teaching.

(5) Option E. The requirements of this paragraph are applicable to candidates who seek a professional certificate and who hold an industry acceptable credential in the certificate area taught or in a closely related subject area acceptable to the department or receive a satisfactory passing score on an industry accepted career and technical education examination that demonstrates mastery in the career and technical education subject for which a certificate is sought or a closely related area as approved by the department through a request for qualifications process; and have at least two years of acceptable work experience in the certificate area to be taught or in a closely related subject area acceptable to the department. The candidate shall meet the requirements in each of the following subparagraphs:

(i) . . .

(ii) Teaching experience. The candidate shall successfully complete three school years of teaching experience, or its equivalent. The candidate who completes this requirement in total or part through teaching in New York public schools shall be required to participate in a mentor program in the first [year] 180 school days of employment, as prescribed in Part 100 of this Title, unless the candidate has successfully completed two years of teaching experience prior to such teaching.

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

(i) . . .

(ii) Teaching experience. The candidate shall successfully complete three school years of teaching experience, or its equivalent. The candidate who completes this requirement in total or part through teaching in New York public schools shall be required to participate in a mentor program in the first [year] 180 school days of employment, as prescribed in Part 100 of this Title, unless the candidate has successfully completed two years of teaching experience prior to such teaching.

(7) Option G. The requirements of this paragraph are applicable to candidates who seek a professional certificate and who possess a bachelor’s degree in the career and technical field in which a certificate is sought or in a closely related subject area, as determined by the department, and have one year of documented and satisfactory work experience
in the career and technical education subject for which a certificate is sought, related area, or a related area, as determined by the department, or hold an industry related credential in the career and technical subject for which a certificate is sought, or a related area, as determined by the department. The candidate shall meet the requirements in each of the following subparagraphs:

(i) Teaching experience. The candidate shall successfully complete three school years of teaching experience, or its equivalent. The candidate who completes this requirement in total or part through teaching in New York public schools shall be required to participate in a mentor program in the first [year] 180 school days of employment, as prescribed in Part 100 of this Title, unless the candidate has successfully completed two years of teaching experience prior to such teaching in the public schools.

(ii) Teaching experience. The candidate shall successfully complete three school years of teaching experience, or its equivalent. The candidate who completes this requirement in total or part through teaching in New York public schools shall be required to participate in a mentor program in the first [year] 180 school days of employment, as prescribed in Part 100 of this Title, unless the candidate has successfully completed two years of teaching experience prior to such teaching in the public schools.

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

Data, views or arguments may be submitted to: Kelly Grace, NYS Education Department, 89 Washington Avenue, 975 EBA, Albany, NY 12234, (518) 486-2573, 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 all public schools and all 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 purpose of the proposed amendment to Section 80-3.4 of the Regulations of the Commissioner of Education is to change the current mentoring requirement from having to take place during the first year of employment to the first 180 days of employment (the equivalent of an academic year). This change enables new teachers who are hired late in the school year to have the same amount of time to participate in mentored experience as those hired early in a school year.

3. NEEDS AND BENEFITS:
Section 80-3.4 of the Regulations of the Commissioner of Education outlines the requirements for candidates seeking a professional certificate in the classroom teaching service. One of these requirements is that candidates must complete three years of teaching experience, and as a part of that experience, participate in a mentor program during the first year of employment. Mentoring programs provide support for new teachers in order to ease the transition from teacher preparation to practice. The goals of mentoring programs include increasing the retention and skills of new teachers.

Proposing teachers to complete a mentor program during their first year of teaching is critical for their professional development. The current regulation requires mentoring to take place during the first year of employment. However, some teachers are hired late in the academic year, giving them only until the end of the academic year to engage in a mentoring program.

Proposed Amendment
The proposed amendment would change the mentoring requirement from the first year of employment to the first 180 school days of employment, which is equivalent to an academic year. This change would enable new teachers who are hired late in the academic year to have the same amount of time to participate in a mentor program as new teachers who begin teaching on the first day of the academic year. The proposed amendment is also consistent with one of the policy recommendations in the draft New York State ESSA plan.

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.
- c. Costs to private regulated parties: The amendment does not impose any costs on private regulated parties.
- d. Costs to regulating agency for implementation and continued administration: See above.

5. LOCAL GOVERNMENT MANDATES:
The proposed amendment does not impose any additional program, service, duty or responsibility upon any local government.

6. PAPERWORK:
The proposed amendment does not impose any additional paperwork requirements.

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

8. ALTERNATIVES:
No alternatives were considered.

9. FEDERAL STANDARDS:
There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:
It is anticipated that the proposed amendment will be adopted as a permanent rule by the Board of Regents at its March 2018 meeting. If adopted at the March 2018 meeting, the proposed amendment will become effective on March 29, 2018.

Regulatory Flexibility Analysis

The purpose of the proposed amendment to Section 80-3.4 of the Regulations of the Commissioner of Education is to change the current mentoring requirement for candidates seeking a professional teaching certificate from having to take place during the first year of employment to the first 180 days of employment (the equivalent of an academic year). This change enables new teachers who are hired late in the school year to have the same amount of time to participate in mentored experience as those hired early in a school year.

The amendment does not impose any new recordkeeping or other compliance requirements, and will not have an adverse economic impact on local governments or small businesses. Because it is evident from the nature of the proposed 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:
This proposed amendment applies to all individuals in New York State pursuing a professional certificate in the classroom teaching service and school districts or BOCES who wish to hire them for their experience to gain their professional certificate, 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 80-3.4 of the Regulations of the Commissioner of Education outlines the requirements for candidates seeking a professional certificate in the classroom teaching service. One of these requirements is that candidates must complete three years of teaching experience, and as a part of that experience, participate in a mentored program during the first year of employment. Mentoring programs provide support for new teachers in order to ease the transition from teacher preparation to practice. The goals of mentoring programs include increasing the retention and skills of new teachers.

Proposing teachers to complete a mentoring program during their first year of teaching is critical for their professional development. The current regulation requires mentoring to take place during the first year of employment. However, some teachers are hired late in the academic year, giving them only until the end of the academic year to engage in a mentoring program.

Proposed Amendment
The proposed amendment would change the mentoring requirement from the first year of employment to the first 180 school days of employment, which is equivalent to an academic year. This change would enable new teachers who are hired late in the academic year to have the same amount of time to participate in a mentor program as new teachers who begin teaching on the first day of the academic year. The proposed amendment is also consistent with one of the policy recommendations in the draft New York State ESSA plan.

3. COSTS:
The proposed amendment does not impose any costs on teacher certifi-
cation candidates and/or the New York State school districts/BOCES who wish to hire them in农村 areas.

4. MINIMIZING ADVERSE IMPACT:
The proposed amendment has no adverse impact on teacher certification candidates and/or the New York State school districts/BOCES who wish to hire them in rural areas.

5. RURAL AREA PARTICIPATION:
Copies of the proposed amendments have been provided to Rural Advisory Committee for review and comment.

Job Impacts:
The purpose of the proposed amendment to Section 80-3.4 of the Regulations of the Commissioner of Education is to change the current mentoring requirement from having to take place during the first year of employment to the first 180 days of employment (the equivalent of an academic year). This change enables new teachers who are hired late in the school year to have the same amount of time to participate in mentoring as those hired early in a school year.

Because it is evident from the nature of the proposed amendments that they 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.

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Creation of New Certification Area and Tenure Area in the Classroom Teaching Service for Computer Science

I.D. No. EDU-52-17-00009-P

Pursuant to the provisions of the State Administrative Procedure Act, notice is hereby given of the following proposed rule making

Proposed Action: Amendment of Parts 30, 80 and section 52.21 of Title 8 N.Y.C.R.

Statutory authority: Education Law, sections 101, 207, 210, 215, 301, 3001, 3004 and 3009

Subject: Creation of new certification area and tenure area in the classroom teaching service for computer science.

Purpose: To establish the requirements for a computer science certification area (all grades) and a new tenure area.

Text of proposed rule:
1. Subdivisions (d) and (e) of Section 30-1.2 of the Rules of the Board of Regents shall be renumbered as subdivisions (e) and (f) and the renumbered subdivision (e) shall be amended to read as follows:
   (d) Except as otherwise provided in subdivisions (b) and (c), richness and seniority rights in his or her previous tenure area while assigned to a position where he or she develops a substantial portion of his or her time to the performance of computer science instruction as a result of a school district taking over a program formerly operated by a board of cooperative educational services and shall continue to credit such professional educator with tenure and seniority rights in such tenure area while he or she is assigned to devote a substantial portion of his or her time to the performance of computer science instruction in such tenure area at the board of cooperative educational services.

2. A new subdivision (d) shall be added to section 30-1-2 of the Rules of the Board of Regents to read as follows:
   (d) The provisions of this Subpart shall apply to a professional educator employed by a school district or board of cooperative educational services to devote a substantial portion of his or her time to the provision of instruction in computer science, on or after August 1, 1975, as follows:
   (1) A professional educator employed by a school district or board of cooperative educational services on September 1, 2022 who was previously appointed by the board to tenure or a probationary period in a tenure area identified in this Subpart shall either:
      (i) continue to receive credit toward tenure and/or accrue tenure and seniority rights in his or her previous tenure area while assigned to a position where he or she develops a substantial portion of his or her time to the provision of instruction in computer science; or
      (ii) if the professional educator provides knowing consent to the school district or board of cooperative educational services to change his or her tenure area pursuant to section 30-1-9 of this Subpart by September 1, 2022, he or she may receive credit toward tenure and/or accrue tenure and seniority rights in the special subject tenure area of computer science, established in section 30-1-8 of this Subpart, from the date of his or her initial assignment to a position where he or she develops a substantial portion of his or her time to the provision of instruction in computer science and he or she shall continue to receive tenure and seniority rights in that tenure area while assigned to a position where he or she develops a substantial portion of his or her time to the provision of computer science instruction appropriate for such tenure area.

3. Paragraphs (14) through (16) of subdivision (a) of section 30-1-8 of the Rules of the Board of Regents shall be amended to read as follows:
   (14) speech—remedial; and
   (15) English as a second language; and
   (16) Computer science.

4. Subdivision (d) in section 30-1-9 of the Rules of the Board of Regents, is amended to read as follows:
   (d) If a professional educator possesses certification appropriate to more than a single tenure area and the board of education or board of cooperative educational services proposes at the time of initial appointment to assign such individual in such a manner that he will devote a substantial portion of his time during each of the school years constituting the probationary period in more than one of the tenure areas established by this Subpart, the board shall in its resolution of appointment designate such tenure area and shall thereafter separately confer or deny tenure to such individual in the manner prescribed by statute in each designated tenure area, except that individuals accruing tenure and/or seniority rights in their previous tenure area for the performance of duties in instructional support services or concentration areas prescribed in sections 30-1-2(c)(1)(i) and (d)(1)(i) of this Subpart, shall only accrue tenure and/or seniority rights in their previous tenure area and not in one of the instructional support services tenure areas or the computer science tenure area prescribed in section 30-1-8(a) and (e) of this Subpart as applicable.

5. Subparagraph (v) of paragraph (3) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:
   (v) Programs leading to initial certification valid for teaching a special subject (all grades).

   (a) Content core. [In] Except as provided in paragraph (1) of this subdivision, in addition to meeting the general requirements for the content core prescribed in clause (2)(ii)(b) of this subdivision, the content core shall be a major or its equivalent in the subject area of the certificate that provides a knowledge base for assisting students in meeting the State learning standards for students, as applicable to one of the following subjects and prescribed in Part 100 of this Title: dance, family and consumer sciences, health education, music, physical education, technology education, theatre, or visual arts.

   (1) For certificates in computer science (all grades), in addition to meeting the general requirements for the content core prescribed in clause (2)(ii)(b) of this subdivision and until such time as the Department adopts State learning standards for computer science in Part 100 of this Title, the content core shall be at least a total of 12 semester hours that provides a knowledge base for assisting students in understanding the following concepts:
6. Subparagraphs (xxvi) through (xlvii) of paragraph (1) of subdivision (e) of section 80-3.2 of the Regulations of the Commissioner of Education shall be renumbered subparagraphs (xxvii) through (xlviii) of section 80-3.2 of the Regulations of the Commissioner of Education and a new subdivision (xxix) shall be added to read as follows:

(ii) Computer science, all grades.

7. Subdivision (b) of section 80-3.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(b) Requirements for initial certificates in all titles in classroom teaching service except in a specific career and technical subject within the field of agriculture, business and marketing, family and consumer sciences, health, a technical area or a trade (grades 7 through 12). The candidate shall meet the requirements in each of the following paragraphs:

(1) Examination. The candidate shall meet the examination requirement by meeting the requirements in one of the following subparagraphs:

(ii) Except as otherwise provided in this section, for candidates applying for certification on or after May 1, 2014 or candidates who applied for certification before May 1, 2014 but did not meet all the requirements for an initial certificate on or before April 30, 2014, such candidates shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination teacher performance assessment, the educational assessment tests, and any additional requirements in the area of the certificate, when available, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test or the teacher performance assessment and a candidate seeking an initial certificate in the title of Educational Technology Specialist (all grades) shall not be required to achieve a satisfactory level of performance on the teacher performance assessment.

(2) Education. The candidate shall meet the education requirement through satisfactory completion of a bachelor’s degree or higher and have satisfactory industry experience in the field.

(i) The requirements of this paragraph are only applicable to candidates who possess a bachelor’s degree or higher, and at least three years of documented and satisfactory occupational work experience in computer science, or a related area, as determined by the department. The candidate shall meet the requirements in each of the following subparagraphs:

(iii) Algorithms and programming;

(ii) UNIX operating systems;

(iii) Data and analysis;

(iv) Impacts of computing; and

(v) Networks and the internet.

8. A new subdivision (d) shall be added to section 80-3.3 of the Regulations of the Commissioner of Education to read as follows:

(d) Curriculum, instruction, and assessment, including instructional technology; and

(e) Foundational knowledge in the title of Educational Technology Specialist (all grades) shall not be required to achieve a satisfactory level of performance on the teacher performance assessment.

9. A new section 80-3.14 of the Regulations of the Commissioner of Education shall be added to read as follows:

§ 80-3.14 Statement of continued eligibility for teachers of computer science.

(i) Upon application, any person holding a valid certificate in the classroom teaching service and employed within the five years immediately preceding September 1, 2012, as a teacher of computer science courses in a New York State public school or board of cooperative educational services or any other school where teacher certification is required, may be issued a statement of continued eligibility and may continue to teach computer science courses in the employing school district, school or board of cooperative educational services. The statement of continued eligibility shall be valid for ten years from the date the statement of continued eligibility is issued and the candidate shall not be required to hold a computer science certificate as prescribed in section 80-3.2 of this Title, provided such person holds a permanent or professional certificate in another certification area in the classroom teaching service.

(ii) A statement of continued eligibility shall only be valid for service in the school district, board of cooperative educational services, or other school that employed such individual when the statement of continued eligibility was issued.

(iii) Applications for the statement of continued eligibility must be filed with the department on or before September 1, 2012.
growing movement at the state and national levels for students to learn about computer science in schools. The Department is recommending the development of a computer science certificate that spans all grades in response to the growing need and desire to prepare students to succeed in a world with constantly evolving computer technologies. This certificate would ensure that students are working with teachers who have the knowledge and skills to provide high-quality computer science instruction and would also establish minimum and consistent standards for teachers of computer science courses.

### Needs and Benefits

Computer science courses in schools provide students with the opportunity to learn about computers work and how we can use computers to solve problems in our society. The foundational knowledge in these courses is critical to preparing each child for success in college, career, and citizenship for the 21st century.

There is a growing movement at the state and national levels for students to learn about computer science in schools. In New York City, the goal of the “Computer Science for All” initiative is that all public school students will engage in computer science education at the elementary, middle, and high school levels by 2025. The Association for Computing Machinery, Code.org, Computer Science Teachers Association (CSTA), Cyber Innovation Center, and National Math and Science Initiative collaborated with states, school districts, technology companies, and other organizations in the development of a K-12 Computer Science Framework (2016). This describes the computer science concepts and practices all students should engage through elementary, middle, and high school. In addition, almost all parents (93%) support the use of school resources to provide computer science education at their child’s school (Google & Gallup, 2016).

Learning computer science concepts and practices develops computational skills, logic, problem solving, and creativity. This set of skills is important for citizenship and for any career in today’s world. Jobs in computing are particularly high-paying and in high-demand. According to Code.org, there are currently 486,686 openings for computing jobs while only 42,969 computer science students graduated into the workforce last year. The Bureau of Labor Statistics also projects that two of the top 15 fastest growing jobs from 2016-2026 will be computing jobs: software developers/applications (30.5% expected growth rate) and information security analysts (28.9% expected growth rate).

The College Board offers two Advanced Placement (AP) exams where high school students can demonstrate their understanding of computer science and earn college credit: AP Computer Science A and AP Computer Science Principles. The latter test was launched this year. Code.org found that the number of AP computer science test takers more than doubled from last year to 111,262 test takers in 2017. However, only 20% of the test takers were students of color and 27% of the test takers were female. These percentages highlight the need to provide each student with access to computer science education throughout their schooling, enabling them to learn important knowledge and skills to help close equity gaps in achievement and employment.

The Department is recommending the development of a computer science certificate that spans all grades in response to the growing need and desire to prepare students to succeed in a world with constantly evolving computer technologies. This certificate would ensure that teachers who have the knowledge and skills to provide high-quality computer science instruction and would establish minimum and consistent standards for teachers of computer science courses.

#### Proposed Amendment

At this time, the Department is proposing amendments to Parts 30, 52, and 80 to create a computer science certificate for all grades (P-12) and program registration requirements for computer science education programs. The computer science education programs would enable candidates to obtain an initial certificate in computer science. To allow colleges time to prepare for and develop computer science programs, the proposed amendments will allow certified educators who are currently teaching computer science courses to continue teaching these courses without holding a computer science certificate while holding a statement of continued eligibility.

The amendments also make changes to Part 30 which relates to tenure areas. Computer science will be considered a “special subject” across all grades. The proposed amendment provides flexibility and allows certain candidates who teach a substantial portion of their time in computer science courses to choose to either continue accruing tenure in their base certificate or in the special subject computer science area.

#### Transition and Implementation of the Computer Science Certificate

Currently, teachers who hold a certificate in any area are teaching computer science courses. The proposed amendment outlines a process for “grandfathering” those teachers currently teaching computer science courses, as well as those who begin teaching computer science courses between now and September 1, 2022. This process will allow those teaching computer science in school districts and BOCES to continue doing so without holding a computer science certificate for 10 years from the date the statement of continued eligibility is issued. Having these teachers continue to teach computer science courses provides time for institutions of higher education to develop computer science teacher preparation programs and additional time for these individuals teaching such courses to obtain computer science certification. This process also helps to ensure flexibility during this time of transition for school districts and BOCES.

Creating a new certificate, and therefore a new tenure area, will impact those currently teaching and those entering the profession with a computer science certificate. In response, the proposed amendment adds computer science as a “special subject” tenure area. After September 1, 2022, an educator who was previously appointed tenure in a different tenure area may choose to continue to receive credit toward tenure and seniority rights in their previous tenure area while devoting a substantial portion of their time to teaching computer science courses, or they may choose to change their tenure area to receive credit and accruing seniority rights in the special subject tenure area of computer science. By giving educators a choice, they will be able to make an informed decision as to the accrual of their tenure and seniority rights based on their teaching assignments.

For educators assigned/appointed on or after September 1, 2022 who are devoting a substantial portion (40% or more) of their time teaching computer science, probationary appointments and appointments in tenure are made in accordance with normal tenure rules. Specifically, these teachers may be appointed tenure in the special subject tenure area (computer science).

#### Pathways to a Computer Science Certificate

Overall, the proposed amendments create four pathways for an individual to pursue an initial certificate in computer science:

1. Approved program pathway: an individual pursuing a bachelor’s degree in an educator preparation program leading to an initial certificate in computer science or a master’s degree in an educator preparation program leading to an initial computer science certificate.
2. Individual evaluation pathway: an individual with a bachelor’s degree or higher and at least 12 semester hours of coursework in computer science may pursue this pathway upon meeting pedagogy and student teaching requirements.
3. Industry experience: individuals who already have a bachelor’s degree or higher and also have had three or more years of experience working in a position that requires the skills of a computer scientist may pursue this pathway and would need to complete a specified pedagogical coursework.
4. Additional certificate pathway: individuals who already hold a teaching certificate may pursue an additional certificate in computer science by meeting specific computer science coursework.

Currently, there is no content specialty test (CST) for computer science. However, at such time one becomes available, the Department will require those pursuing an initial certificate in computer science to take and pass the exam.

#### Costs

- **Costs to State government:** The amendments do not impose any costs on State government, including the State Education Department.
- **Costs to local government:** The amendments do not impose any costs on local government.
- **Costs to private regulated parties:** The amendment do not impose any costs on private regulated parties.
- **Costs to regulating agency for implementation and continued administration:** See above.
- **Local government mandates:** The proposed amendment does not impose any additional program, service, duty or responsibility upon any local government.

#### Paperwork

The proposed amendment does not impose any additional paperwork requirements.

#### Duplication

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

#### Alternatives

While alternatives to the creation of a computer science certificate were considered, the proposed amendments were heavily influenced by the results of a Request for Information survey the Department sent to the field (including higher education and P12).

#### Federal Standards

There are no applicable Federal standards.

#### Compliance Schedule

It is anticipated that the proposed amendment will be adopted as a permanent rule by the Board of Regents at its March 2018 meeting. If adopted at the March 2018 meeting, the proposed amendment will become effective on March 28, 2018.

#### Regulatory Flexibility Analysis

**a) Small businesses:**

The purpose of the proposed amendments to Part 30 of the Regents...
Rules, Section 52.21 and Part 80 of the Regulations of the Commissioner of Educations are to create a new certification area and tenure area in the classroom teaching service for computer science. At this time, there is a growing movement at the state and national levels for students to learn about computer science in schools. The Department is recommending the development of a computer science certificate that spans all grades in response to the growing need and desire to prepare students to succeed in a world with constantly evolving computer technologies. This certificate would ensure that students are working with teachers who have the knowledge and skills to provide high-quality computer science instruction and would also establish minimum and consistent standards for teachers of computer science courses.

The amendment does not impose any new 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 proposed 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 is not required and one has not been prepared.

(b) Local governments:
1. EFFECT OF RULE: The purpose of the proposed amendments to Part 30 of the Regents Rules, Section 52.21 and Part 80 of the Regulations of the Commissioner of Educations of are to create a new certification area and tenure area in the classroom teaching service for computer science. Beginning on September 1, 2022, all teachers in grades K-12 who teach computer science courses will be required to hold a certificate in the classroom teaching service in the area of computer science. There will be a transition period (outlined under Compliance Requirements) during which those currently teaching computer science will be “grandfathered” in to the new requirement for a period of time.

2. COMPLIANCE REQUIREMENTS: Currently, teachers who hold a certificate in any area are teaching computer science courses. The proposed amendment outlines a process for “grandfathering” those teachers currently teaching computer science courses, as well as those who begin teaching computer science courses between now and September 1, 2022. This process will allow those teaching computer science courses in school districts and BOCES to continue doing so without holding a computer science certificate for 10 years from the date the statement of continued eligibility is issued. Having these teachers continue to teach computer science courses provides time for institutions of higher education to implement computer science teacher preparation programs and additional time for these individuals teaching such courses to obtain computer science certification. This process also helps to ensure flexibility during this time of transition for school districts and BOCES.

Creating a new certificate, and therefore a new tenure area, will impact those currently teaching and those entering the profession with a computer science certificate. In response, the proposed amendment adds computer science as a “special subject” tenure area. After September 1, 2022, an educator who was previously appointed tenure in a different tenure area may choose to receive credit toward tenure and seniority rights in their previous tenure area while devoting a substantial portion of their time to teaching computer science courses, or they may choose to change their tenure area to receive credit and accrue seniority rights in the special subject tenure area of computer science. By giving educators a choice, they will be able to make an informed decision as to the accrual of their tenure and seniority rights based on their teaching assignments.

3. PROFESSIONAL SERVICES: No professional services are needed to comply with the proposed amendment.

4. COMPLIANCE COSTS: The proposed amendment does not impose any additional compliance costs on school districts and BOCES.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY: The proposed amendment does not impose any additional technological requirements on school districts and BOCES.

6. MINIMIZING AVERSE IMPACT: The Department believes that uniform certification and tenure standards must be established for all teachers employed in school districts and BOCES across the State. Therefore, no alternatives were considered. Moreover, the proposed amendment does not directly impose any additional compliance requirements or costs on school districts.

7. LOCAL GOVERNMENT PARTICIPATION: Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, from the chief school officers of the five big city school districts and from charter schools.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS: This proposed amendment applies to all individuals in New York State pursuing a computer science certificate in the classroom teaching service, as well as the school districts and BOCES offering courses in computer science and any institutions of higher education that teach computer science programs, 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: The purpose of the proposed amendments to Part 30 of the Regents Rules, Section 52.21 and Part 80 of the Regulations of the Commissioner of Educations are to create a new certification area and tenure area in the classroom teaching service for computer science. At this time, there is a growing movement at the state and national levels for students to learn about computer science in schools. The Department is recommending the development of a computer science certificate that spans all grades in response to the growing need and desire to prepare students to succeed in a world with constantly evolving computer technologies. This certificate would ensure that students are working with teachers who have the knowledge and skills to provide high-quality computer science instruction and would also establish minimum and consistent standards for teachers of computer science courses.

At this time, the Department is proposing amendments to Parts 30, 52, and 80 to create a computer science certificate for all grades (P-12) and program registration requirements for computer science education programs. The computer science education programs would enable candidates to obtain a certificate in computer science. To allow colleges time to prepare for and develop computer science programs, the proposed amendments will allow certified educators who are currently teaching computer science courses to continue teaching these courses without holding a computer science certificate while holding a statement of continued eligibility.

The proposed amendment adds computer science as a “special subject” tenure area. After September 1, 2022, an educator who was previously appointed tenure in a different tenure area may choose to receive credit toward tenure and seniority rights in their previous tenure area while devoting a substantial portion of their time to teaching computer science courses, or they may choose to change their tenure area to receive credit and accrue seniority rights in the special subject tenure area of computer science. By giving educators a choice, they will be able to make an informed decision as to the accrual of their tenure and seniority rights based on their teaching assignments.

Creating a new certificate, and therefore a new tenure area, will impact those currently teaching and those entering the profession with a computer science certificate. In response, the proposed amendment adds computer science as a “special subject” tenure area. After September 1, 2022, an educator who was previously appointed tenure in a different tenure area may choose to continue teaching computer science tenure and seniority rights in their previous tenure area while devoting a substantial portion of their time to teaching computer science courses, or they may choose to change their tenure area to receive credit and accrue seniority rights in the special subject tenure area of computer science. By giving educators a choice, they will be able to make an informed decision as to the accrual of their tenure and seniority rights based on their teaching assignments.

The proposed amendment does not impose any costs on teacher certification candidates and/or the New York State school districts/BOCES who wish to hire them.

4. MINIMIZING AVERSE IMPACT: The proposed amendment was developed after significant feedback from the P-12 and Higher Education sectors, which included individuals
and higher education institutions located in rural areas. The Department believes that uniform standards for certification and tenure in computer science and program registration standards in computer science must be established across the State. Therefore, no alternatives were considered for those located in rural areas of the State.

5. RURAL AREA PARTICIPATION:
Copies of the proposed amendments have been provided to Rural Advisory Committee for review and comment.

Job Impact Statement:
The purpose of the proposed amendments to Part 30 of the Regents Rules, Section 52.21 and Part 80 of the Regulations of the Commissioner of Educations are to create a new certification area and tenure area in the classroom teaching service for computer science. At this time, there is a growing movement at the state and national levels for students to learn about computer science in schools. The Department is recommending the development of a computer science certificate that spans all grades in response to the growing need and desire to prepare students to succeed in a world with constantly evolving computer technologies. This certificate would ensure that students are working with teachers who have the knowledge and skills to provide high-quality computer science instruction and would also establish minimum and consistent standards for teachers of computer science courses.

The proposed amendment includes a provision allowing for those currently teaching computer science courses to be “grandfathered” into the new certification requirement. Upon issuance of a statement of continued eligibility, those teachers will be able to continue teaching computer science courses for 10 years from the date of such statement without holding a computer science certificate. This provision is intended to ease the transition for candidates, school districts, and BOCES in terms of job impact and preventing any teacher shortage.

Because it is evident from the nature of the proposed amendments that they 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Alternative Teacher Certification Program Models

L.D. No. EDU-52-17-00010-P

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

Proposed Action: Amendment of section 80-5.13 of Title 8 NYCCR.

Statutory authority: Education Law, sections 207, 305, 3001, 3003, 3004 and 3009.

Subject: Alternative Teacher Certification Program Models.

Purpose: To have greater flexibility in the design of alternative teacher certification program models.

Text of proposed rule: 1. Subparagraph (ii) of paragraph (2) of subdivision (a) of section 80-5.13 is amended to read as follows:

(iii) Employment and support commitment. The candidate shall submit satisfactory evidence of having a commitment from a school or school district of employment as a [full-time] teacher with the school or school district in the area of the certificate sought for at least three school years, which shall include at least one year of [mentoring] full-time teaching experience that is mentored, as prescribed in section 52.21(b)(3)(xvii) or (b)(5) and 80-5.13(b)(1)(i) of this Title.

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

Data, views or arguments may be submitted to: Kelly Grace. NYS Education Department, Office of Higher Education, Room 975 EBA, Albany, NY 12234, (518) 486-2573, email: regcomments@nysed.gov.

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

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

Regulatory Impact Analysis

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

Education Law 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies. 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 teaching service. 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 purpose of the proposed amendment to Section 80-5.13 of the Regulations of the Commissioner of Education is to maintain the three-year employment commitment but in lieu of all three years being full-time, the proposed amendment allows a candidate to be initially employed part-time while gradually assuming more responsibility and then ultimately teaching full-time for at least one school year. This amendment will allow for a range of alternative program preparation models and would validate the employment service of Transitional B candidates while completing their alternative teacher preparation program.

3. NEEDS AND BENEFITS:

Alternative teacher preparation (ATP) programs in New York are designed to attract highly competent people who possess a bachelor’s degree with a major in the subject they plan to teach, but who initially lack courses in teaching. ATP programs qualify candidates for Transitional B certification validating their employment as teacher of record as they transition to meeting all requirements for initial teaching certification. The model currently supports programs in the State, including the NYC Teaching Fellows and Teach for America programs.

The Transitional B certificate is limited to the employing school district and remains valid only while the candidate is enrolled in the ATP program. The current regulation also requires the employing school district to provide a commitment to the candidate that they will employ the candidate full-time for the three school years while they simultaneously complete required credit-bearing courses and seminars that are designed to link educational theory with classroom experience. Like traditional programs of preparation, the ATP candidates must complete coursework that addresses all areas of teaching competency required for initial certification.

Institutions are finding the requirements for a Transitional B certificate limiting because current regulations require the candidate to be employed full-time as a teacher of record at the onset of their employment. Variations of the ATP model have been proposed where the ATP candidate is initially employed part-time while gradually assuming more responsibility and then ultimately teaching full-time for at least one school year. This amendment would allow for a range of alternate program preparation models and would validate the employment service of Transitional B candidates while completing their alternative teacher preparation program.

The proposed amendment seeks to make it clear that the employment and support commitment include at least one year of full-time mentorship teaching to meet the experience requirements for an Initial teaching certificate as prescribed in Section 80-5.13(b)(1)(i) of the Regulations.

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.

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment does not impose any additional paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternatives were considered. The proposed amendment seeks to create more flexibility for alternative teacher preparation models and candidates enrolled in such programs obtaining a Transitional B certificate.
The purpose of the proposed amendment to Section 80-5.13 of the Regulations of the Commissioner of Education is to maintain the three-year employment commitment but in lieu of all three years being full-time, the proposed amendment allows a candidate to be initially employed part-time while gradually assuming more responsibility and then ultimately teaching full-time for at least one school year. This amendment will allow for a range of alternative program preparation models and would validate the employment service of Transitional B candidates while completing their alternative teacher preparation program.

The amendment does not impose any new recordkeeping or other compliance requirements, and will not have an adverse economic impact, on local governments or small businesses. Because it is evident from the nature of the proposed 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.

The purpose of the proposed amendment to Section 80-5.13 of the Regulations of the Commissioner of Education is to maintain the three-year employment commitment but in lieu of all three years being full-time, the proposed amendment allows a candidate to be initially employed part-time while gradually assuming more responsibility and then ultimately teaching full-time for at least one school year. This amendment will allow for a range of alternative program preparation models and would validate the employment service of Transitional B candidates while completing their alternative teacher preparation program.

Proposed Amendment

The Department proposes an amendment to the regulation to provide more flexibility for scaffolded training. The proposed amendment maintains the three-year employment commitment but in lieu of all three years being full-time, the proposed amendment allows a candidate to be initially employed part-time while gradually assuming more responsibility and then ultimately teaching full-time for at least one school year. This amendment would allow for a range of alternate program preparation models and would validate the employment service of Transitional B candidates while completing their alternative teacher preparation program.

The proposed amendment also maintains the current rigor by making it clear that the employment and support commitment include at least one year of full-time mentored teaching to meet the experience requirements required for an Initial teaching certificate as prescribed in Section 80-5.13(b)(1)(ii) of the Regulations.

3. COSTS:
The proposed amendment does not impose any costs on teacher certification candidates pursuing a Transitional B certificate, and/or the New York State school districts/BOCES who wish to hire them.

4. MINIMIZING ADVERSE IMPACT:
The proposed amendments create no adverse impact and in fact creates more flexibility for institutions of higher education offering alternative preparation programs and those candidates enrolled in such programs.

5. RURAL AREA PARTICIPATION:
Copies of the proposed amendments have been provided to Rural Advisory Committee for review and comment.

Job Impact Statement

The purpose of the proposed amendment to Section 80-5.13 of the Regulations of the Commissioner of Education is to maintain the three-year employment commitment but in lieu of all three years being full-time, the proposed amendment allows a candidate to be initially employed part-time while gradually assuming more responsibility and then ultimately teaching full-time for at least one school year. This amendment will allow for a range of alternative program preparation models and would validate the employment service of Transitional B candidates while completing their alternative teacher preparation program.

Because it is evident from the nature of the proposed amendment 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.

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Grade-Level Extensions for Certain Candidates Who Hold a Students with Disabilities Generalist Certificate

I.D. No. EDU-52-17-00011-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule: Proposed Action: Amendment of section 80-4.3 of Title 8 NYCRR.


Subject: Grade-level extensions for certain candidates who hold a Students with Disabilities Generalist certificate.

Purpose: To expand the pool of qualified teachers of students with disabilities by establishing grade level extensions for certificates.

Text of proposed rule: New subdivisions (o), (p), (q) and (r) shall be added to section 80-4.3 of the Regulations of the Commissioner of Education to read as follows:

(o) Requirements for a grade-level extension to teach students with disabilities (grades 3-4). The candidate shall meet the requirements in each of the following paragraphs:

(1) the candidate shall hold a valid initial or professional certificate in students with disabilities (birth - grade 2);

(2) the candidate shall submit satisfactory evidence of at least three school years of teaching experience; provided that at least 75 percent of the candidate’s time is spent teaching students with disabilities in grades 1 and/or 2 in the public schools of this State while holding a valid certificate, during each of the three school years; and

(3) the candidate must either:

(i) provide satisfactory evidence of completion of at least 45 hours of acceptable continuing teacher and leader education focused on students with disabilities at the elementary level; or

(ii) the candidate shall complete a minimum of three semester hours of satisfactory pedagogical study or its equivalent, that is focused on students with disabilities at the elementary level.

(p) Requirements for a grade-level extension to teach students with disabilities in pre-kindergarten and kindergarten. The candidate shall meet the requirements in each of the following paragraphs:

(1) the candidate shall hold a valid initial or professional certificate in students with disabilities (grades 1-6);

(2) the candidate shall submit satisfactory evidence of at least three school years of teaching experience; provided that at least 75 percent of the candidate’s time is spent teaching students with disabilities in grades 1 and/or 2 in the public schools of this State while holding a valid certificate, during each of the three school years;

(3) the candidate must either:

(i) provide satisfactory evidence of completion of at least 45 hours of acceptable continuing teacher and leader education focused on students with disabilities at the early childhood level; or

(ii) the candidate shall complete a minimum of three semester hours of satisfactory pedagogical study or its equivalent, that is focused on students with disabilities at the early childhood level.

(q) Requirements for the extension to teach students with disabilities (grades 7-8). The candidate shall meet the requirements in each of the following paragraphs:

(1) the candidate shall hold a valid initial or professional certificate in students with disabilities (grades 1-6);

(2) the candidate shall show satisfactory evidence of a minimum of three years of teaching experience; provided that at least 75 percent of the candidate’s time is spent teaching students with disabilities in grades 7 and/or 6 in the public schools of this State while holding a valid certificate, during each of the three school years; and

(3) either:

(i) provide satisfactory evidence of completion of at least 45 hours of acceptable continuing teacher and leader education focused on students with disabilities at the middle level; or

(ii) the candidate shall complete a minimum of three semester hours of satisfactory pedagogical study or its equivalent, that is focused on students with disabilities at the middle level.

(r) Requirements for a grade-level extension to teach students with disabilities (grades 5-6). The candidate shall meet the requirements in each of the following paragraphs:

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The candidate shall hold a valid initial or professional certificate in students with disabilities (7-12 generalist).

The candidate shall show satisfactory evidence of a minimum of three years of teaching experience; provided that at least 75 percent of the candidate’s time spent teaching students with disabilities in grades 7 and/or 8 in the public schools of this State while holding a valid certificate, during each of the three school years; and

(3) either:

(i) provide satisfactory evidence of completion of at least 45 hours of acceptable continuing teacher and leader education focused on students with disabilities at the middle level; or

(ii) the candidate shall complete a minimum of three semester hours of satisfactory pedagogical study or its equivalent, as determined by the Commissioner, that is focused on students with disabilities at the middle level.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Counsel, Room 975 EBA, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Kelly Grace, NYS Education Department, Room 975 EBA, Albany, NY 12234, (518) 486-2573, 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 all public schools and all 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 purpose of the proposed amendment to Section 80-4.3 of the Regulations is to expand the pool of qualified teachers of students with disabilities by extending the grade levels in which they can teach, upon meeting certain requirements including experience and either CTLE or a college course. For each extension, a Students with Disabilities Generalist certificate holder must have a minimum of three years of teaching experience in either of the two grade levels closest to the grade levels of the extension, plus either 45 hours of acceptable Continuing Teacher and Leader Education (CTLE) or 3 semester hours of pedagogical coursework focused on the grade levels of the extension sought.

Experience for this purpose shall be defined as at least 75% or more of the candidate’s time spent teaching students with disabilities in either of the two grade levels closest to the grade level extension during each of the three school years.

Current Certification Teaching Experience Requirement Teachers Choose One of the Following Requirements Proposed Extension

| Grade – |
|---|---|---|---|
| Birth – Grade 2 | Minimum of 3 years teaching experience at 1st and/or 2nd grade levels. | Minimum of 45 hours of acceptable CTLE focused on elementary level education. | Minimum of 3 semester hours of pedagogical coursework focused on elementary level education. | Grades 3-4 |
| Grades 1-6 | Minimum of 3 years teaching experience at 1st and/or 2nd grade levels. | Minimum of 45 hours of acceptable CTLE focused on early childhood education. | Minimum of 3 semester hours of pedagogical coursework focused on early childhood education. | Grades PK-K |
| Grades 7-12 | Minimum of 3 years teaching experience at 7th and/or 8th grade levels. | Minimum of 45 hours of acceptable CTLE focused on middle level education. | Minimum of 3 semester hours of pedagogical coursework focused on middle level education. | Grades 5-6 |

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.

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment does not impose any additional paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternatives were considered. The proposed amendment seeks to address the shortage of teachers of students with disabilities by creating more flexibility in the grade levels in which they can teach.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted as a permanent rule by the Board of Regents at its March 2018 meeting. If adopted...
at the March 2018 meeting, the proposed amendment will become effective on March 28, 2018.

**Regulatory Flexibility Analysis**

The purpose of the proposed amendment to Section 80-4.3 of the Regulations is to expand the pool of qualified teachers of students with disabilities by extending the grade levels in which they can teach, upon meeting certain requirements including experience and either CTLE or a college course. For each extension, a Students with Disabilities Generalist certificate holder must have a minimum of three years of teaching experience in either of the two grade levels closest to the grade levels of the extension, plus either 45 hours of acceptable Continuing Teacher and Leader Education (CTLE) or 3 semester hours of pedagogical coursework focused on the grade levels of the extension sought. Experience for this purpose shall be defined as at least 75% or more of the candidate’s time spent teaching students with disabilities in either of the two grade levels closest to the grade level extension during each of the three school years.

The amendment does not impose any new recordkeeping or other compliance requirements, and will not have an adverse economic impact, on local governments or small businesses. Because it is evident from the nature of the proposed 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:**

This proposed amendment applies to all individuals in New York State pursuing an extension certificate in the classroom teaching service for students with disabilities in grade in the grades 3-4, PK-K, 7-8, or 5-6, 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:**

The purpose of the proposed amendment to Section 80-4.3 of the Regulations is to expand the pool of qualified teachers of students with disabilities by extending the grade levels in which they can teach, upon meeting certain requirements including experience and either CTLE or a college course.

**Proposed Amendment**

The Department is proposing four different extension certificates for current holders of Students with Disabilities Generalist certificates. For each extension, a Students with Disabilities Generalist certificate holder must have a minimum of three years of teaching experience in either of the two grade levels closest to the grade levels of the extension, plus either 45 hours of acceptable Continuing Teacher and Leader Education (CTLE) or 3 semester hours of pedagogical coursework focused on the grade levels of the extension sought. Experience for this purpose shall be defined as at least 75% or more of the candidate’s time spent teaching students with disabilities in either of the two grade levels closest to the grade level extension during each of the three school years.

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<tr>
<th>Current Certification</th>
<th>Teaching Experience Requirement</th>
<th>Teachers Choose One of the Following Requirements</th>
<th>Proposed Extension</th>
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<tr>
<td>Birth – Grade 2</td>
<td>Minimum of 3 years teaching experience at 1st and/or 2nd grade levels.</td>
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<td>CTLE</td>
<td>College Course</td>
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| Grades 1-6 | Minimum of 3 years teaching experience at 1st and/or 2nd grade levels. | Minimum of 45 hours of acceptable CTLE focused on early childhood education. | Minimum of 3 semester hours of pedagogical coursework focused on early childhood education. |
| Grades PK-K |                                                               |                                               |                              |
| Grades 7-12 | Minimum of 3 years teaching experience at 5th and/or 6th grade levels. | Minimum of 45 hours of acceptable CTLE focused on middle level education. | Minimum of 3 semester hours of pedagogical coursework focused on middle level education. |
| Grades 5-6 | Minimum of 3 years teaching experience at 7th and/or 8th grade levels. | Minimum of 45 hours of acceptable CTLE focused on middle level education. | Minimum of 3 semester hours of pedagogical coursework focused on middle level education. |

3. **COSTS:**

The proposed amendment does not impose any costs on New York State school districts or BOCES.

4. **MINIMIZING ADVERSE IMPACT:**

The proposed amendments create no adverse impact on those school districts and BOCES in rural areas, and applies equally. The proposed amendment seeks to address the shortage of teachers of students with disabilities by creating more flexibility in the grade levels in which they can teach.

5. **RURAL AREA PARTICIPATION:**

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

**Job Impact Statement**

The purpose of the proposed amendment to Section 80-4.3 of the Regulations is to expand the pool of qualified teachers of students with disabilities by extending the grade levels in which they can teach, upon meeting certain requirements including experience and either CTLE or a college course. For each extension, a Students with Disabilities Generalist certificate holder must have a minimum of three years of teaching experience in either of the two grade levels closest to the grade levels of the extension, plus either 45 hours of acceptable Continuing Teacher and Leader Education (CTLE) or 3 semester hours of pedagogical coursework focused on the grade levels of the extension sought. Experience for this purpose shall be defined as at least 75% or more of the candidate’s time spent teaching students with disabilities in either of the two grade levels closest to the grade level extension during each of the three school years. By extending the grade bands in which qualified teachers of students with disabilities may teach, the Department believes this will help to address the shortage of teachers of students with disabilities.

Because it is evident from the nature of the proposed amendment 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. In fact, the Department believes that the proposed amendment will help to address the shortage of teacher in students with disabilities.
Department of Financial Services

EMERGENCY RULE MAKING

Public Retirement Systems

I.D. No. DFS-52-17-00006-E

Filing No. 1069

Filing Date: 2017-12-11

Effective Date: 2017-12-11

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

Action taken: Amendment of Part 136 (Regulation 85) of Title 11 NYCCR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 314, 7401(a) and 7402(n)

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

Specific reasons underlying the finding of necessity: The Second Amendment to 11 NYCCR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards of behavior with regard to investment of the assets of the New York State Common Retirement Fund (“Fund”), conflicts of interest, and performance. In addition, it created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent events surrounding how placement agents conduct business on behalf of their clients with regard to the Fund compel the Superintendent to conclude that the mere strengthening of the Fund’s control environment is insufficient to protect the integrity of the state employees’ retirement systems. Rather, only an immediate ban on the use of placement agents conduct business by the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments.


Subject: Public Retirement Systems.

Purpose: To ban the use of placement agents by investment advisers engaged by the state employees’ retirement systems.

Text of emergency rule: Section 136-2.2 is amended to read as follows:

§ 136-2.2 Definitions.

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

(a) Retirement system shall mean the New York State and Local Employees’ Retirement System and the New York State and Local Police and Fire Retirement System.

(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law (“RSSL”), which holds the assets of the Retirement System.

(d) OSC shall mean the Office of the State Comptroller.

(e) (b) Consultant or advisor shall mean any person (other than an OSC employee, or entity retained by the [fund] Fund to provide technical or professional services to the [fund] Fund relating to investments by the [fund] Fund, including outside investment counsel and litigation counsel, custodians, administrators, broker-dealers, and persons or entities that identify investment objectives and risks, assist in the selection of [money] investment managers, securities, or other investments, or monitor investment performance.

(f) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.

(g) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law (“RSSL”), which holds the assets of the Retirement System.

(h) (e) Investment manager shall mean any person (other than an OSC employee) or entity engaged by the Fund in the management of part or all of an investment portfolio of the [fund] Fund. “Management” shall include, but is not limited to, analysis of portfolio holdings, and the purchase, sale, and lending thereof. For the purposes hereof, any investment made by the Fund pursuant to RSSL § 177(7) shall be deemed to be the investment of the Fund in such investment entity (rather than in the assets of such investment entity).

(i) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the Fund.

(j) OSC shall mean the Office of the State Comptroller.

(k) (b) Placement agent or intermediary shall mean any person or entity, including registered lobbyists, directly or indirectly engaged and compensated by an investment manager (other than [an] a regular employee of the investment manager) to promote investments to the Fund or solicit investment by the investment manager in obtaining investments by the Fund, or otherwise doing business with the Fund.

(l) Retirement System shall mean the New York State Employees’ Retirement System and the New York State and Local Police and Fire Retirement System.

(m) Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the Fund relating to Fund investments.

(n) Retirement System shall mean the New York State and Local Employees’ Retirement System and the New York State and Local Police and Fire Retirement System.

(o) Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records. “Administrative services” do not include services provided to the Fund relating to Fund investments.

(p) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the [fund] Fund, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the [fund] Fund, for the purpose of this paragraph, the term “substantial financial interest” shall mean the control of the entity, whereby “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

(q) (k) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.

Section 136-2.4(d) is amended to read as follows:

(d) Placement agents or intermediaries: In order to preserve the independence and integrity of the [fund] Fund, to [address] preclude potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the [fund] Fund, the Comptroller shall maintain a reporting and review system that must be followed whenever the fund of the Fund shall not [engage, hires, invests with, or commits] engage, hire,
invest with or commit to[,] an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the [fund] Fund. [or, otherwise doing business with the fund. The Comptroller shall require investment managers to disclose to the Comptroller and to his or her designee payments made to any such placement agent or intermediary. The reporting and record system shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.]

Section 136-2.5(g) is amended to read as follows: (g) The Comptroller shall:

(1) file with the superintendent an annual financial statement in the format prescribed by Section 307 of the Insurance Law, including the [retirement system’s] Retirement System’s financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) rule with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the [fund] Fund to investment managers, consultants or advisors, and third party administrators;

(4) disclose on the OSC public website, on at least an annual basis, instances where an investment manager has paid a fee to a placement agent or intermediary;

(5) (4) disclose on the OSC public website the [fund’s] Fund’s investment policies and procedures; and

(6) (5) require fiduciary and conflict of interest reviews of the [fund] Fund every three years by a qualified unaffiliated person.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires March 10, 2018.

Text of rule and any required statements and analyses may be obtained from: Mark MacLeod, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-4937, email: mark.macleod@dps.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent’s authority for the adoption of the rule to 11 NYCRR 136 is derived from sections 202 and 302 of the Financial Services Law (“FSL”) and sections 301, 314, 7401(a), and 7402(n) of the Insurance Law.

FSL section 302 establishes the office of the Superintendent and designates the Superintendent to be the head of the Department of Financial Services (“DFS”).

FSL section 302 and Insurance Law section 301, in material part, authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law.

Insurance Law section 314 vests the Superintendent with the authority to promulgate standards with respect to administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness of the public retirement and pension systems of the State of New York, and to make an examination into the affairs of every system at least once every three years in accordance with Insurance Law sections 310, 311 and 312. The implementation of the standards is necessarily through the promulgation of regulations.

As confirmed by the Court of Appeals in Matter of Dinapoli v. DiNapoli, 9 N.Y.3d 94 (2007), the Superintendent functions in two distinct capacities. The first is as regulator of the insurance industry. The second is as statutory receiver of financially distressed insurance entities. Article 74 of the Insurance Law sets forth the Superintendent’s role and responsibilities in this latter capacity.

Insurance Law section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies.

Insurance Law section 7402(n) provides that it is a ground for rehabilitation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

2. Legislative objectives: Insurance Law section 314 authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of public retirement and pension systems and after a public hearing, standards with respect to the public retirement and pension systems of the State of New York.

This rule, which in effect bans the use of an investment tool that has been found to be untrustworthy, is consistent with the public policy objectives that the Legislature sought to advance in enacting Insurance Law section 314, which provides the Superintendent with the powers to promulgate standards to protect the New York State Common Retirement Fund (the “Fund”).

3. Needs and benefits: The Second Amendment to 11 NYCRR 136 (Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding “pay to play” practices, which historically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund’s control environment is insufficient to protect the integrity of the state employees’ retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund’s members and beneficiaries, and safeguard the integrity of the Fund’s investments. Further, the rule defines “placement agent or intermediary” in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

4. Costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department or other state government agencies or local governments. Investment managers, consultants and advisors will provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: No additional paperwork should result from the prohibition imposed by the rule.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining “placement agent” in more general terms.

In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor’s Office, Comptroller’s Office and Finance Department. These entities agreed with the concerns expressed by the Department and intend to explore remedies most appropriate to the pension funds that they represent.

Initially, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments. The proposed rule was published in the State Register on March 17, 2010. A Public Hearing was held on April 28, 2010. The following comments were received:

Blackstone Group, a global investment manager and financial advisor, wrote to oppose the proposed ban on the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund (“the Fund”). It stated that the rule would lessen the number of investment opportunities brought before the Fund, adversely affect small, medium-sized and women-and minority-owned investment firms seeking to do business with the Fund, and adversely affect a number of New York-headquartered financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule instead:

• A ban on political contributions by any employee of any placement agent seeking to do business with the Fund;

• A requirement that any placement agent seeking to do business with the Fund be registered as a broker dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority (“FINRA”);

• A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association (“SIFMA”), representing hundreds of securities firms, banks, and asset managers, com-
mented that the proposed rule (1) inadvertently limits the access of smaller fund member to the Fund; (2) restricts the marketing of the Fund; and that is pursuant to further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal regulation or on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placement agent initiatives are finalized.

The Superintendent did consider other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms. At the time, the Superintendent concluded that only an immediate, total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund's investments.

**Regulatory Flexibility Analysis**

1. Effect of the rule: This rule strengthens standards for the management of the New York State and Local Employees’ Retirement Fund and New York State and Local Police and Fire Retirement System (collectively, "the Retirement System"), and the New York State Common Retirement Fund ("the Fund").

The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective April 19, 2008, established new standards with regard to the investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the existing standards of the Fund's control environment are insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Insurance Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund’s members and beneficiaries, and safeguard the integrity of the Fund's investments. Moreover, the rule defines “placement agent or intermediary” in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles specified in the rule. Most among all affected parties, the State Comptroller, as a fiduciary whose responsibilities are clarified and broadened by the rule, is impacted by the rule. The State Comptroller is not a “small business” as defined in section 102(8) of the State Administrative Procedure Act.

This rule will affect investment managers and other intermediaries (other than OSC employees) who provide technical or professional services to the Fund and related to Fund investments. The rule will prohibit investment managers from using the services of a placement agent unless such agent is a regular employee of the investment manager and is acting in a broader capacity than just providing specific investment advice to the Fund. In addition, the rule is also directed to placement agents, who as a result of this rule, will no longer be engaged directly or indirectly by investment managers that do business with the Fund. Some investment managers and placement agents may come within the definition of “small business” set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

The rule bans the use of placement agents in connection with investments by the Fund. This may adversely affect the business of placement agents, who will lose opportunities to earn profits in connection with investment opportunities with the Fund. Nevertheless, recent allegations regarding “pay-to-play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund’s members and beneficiaries and to safeguard the integrity of the Fund’s investments.

This rule will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this rule is directed at the State Comptroller; employees of the Office of the State Comptroller; and investment managers, placement agents, consultant or advisors - none of which are local governments.

2. Compliance requirements: None.

3. Professional services: Investment managers, consultants and advisors who provide services to the Fund, and are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may need to employ other professional services.

4. Compliance costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department of Financial Services or other state government agencies or local governments. However, investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Economic and technological feasibility: The rule does not impose any economic or technological requirements on affected parties, except for placement agents who will lose the opportunity to earn profits in connection with investments by the Fund.

6. Minimizing adverse impact: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund. The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. In the end, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments.

7. Small business and local government participation: In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor’s Office, Comptroller’s Office and Finance Department.

A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: Investment managers, placement agents, consultants or advisors that do business in rural areas as defined under State Administrative Procedure Act Section 102(10) will be affected by this rule. The rule bans the use of placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"), which may adversely affect the business of placement agents and of other entities that utilize placement agents and are involved in Fund investments.

2. Reporting, recordkeeping and other compliance requirements; and professional services: This rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, with the exception of requiring investment managers, consultants and advisors who provide services to the Fund to discontinue the use of placement agents.

3. Costs: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund.

4. Minimizing adverse impact: The rule does not adversely impact rural areas.

5. Rural area participation: A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

**Job Impact Statement**

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. The rule bans investment managers from using placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund").
The rule may adversely affect the business of placement agents, who could lose the opportunity to earn profits in connection with investments by the Fund. Nevertheless, in view of recent events about how placement agents conduct business on behalf of their clients with regard to the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund’s members and beneficiaries, and to safeguard the integrity of the Fund’s investments.

**PROPOSED RULE MAKING**

**NO HEARING(S) SCHEDULED**

**Special Risk Insurance**

**L.D. No. DFS-52-17-00001-P**

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

**Proposed Action:** This is a consensus rule making to amend Part 16 (Regulation 86) of Title 11 NYCRR.  

**Statutory authority:** Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 307, 308 and art. 63  

**Subject:** Special Risk Insurance.  

**Purpose:** To update section 16.12(e) to incorporate changes and additions to class 2 risks introduced by 5/10/17 Public Notice.  

**Substance of proposed rule (Full text is posted at the following State website: http://www.dfs.ny.gov):** Section 16.12(e) is amended to add two new class 2 risks, repeal a current class 2 risk, and revise six current class 2 risks.  

New statistical codes 2-50010 (Directors and Officers Liability Insurance – Biotech & Nanotechnology) and 2-50011 (Crowdfunding Platforms – Directors and Officers Liability Insurance, Professional/Errors & Omissions Liability, or Fiduciary Liability Policies) are added to Section 16.12(e) and statistical code 2-04002 (Federal Crime Program - Excess on Commercial Risks) is repealed.  

The classification description of statistical code 2-13007 is amended to correct a technical error.  

The classification of statistical code 2-02038 is amended to read as: Television Broadcast Interruption, and a technical error in the classification description is corrected.  

The classification of statistical code 2-14042 is amended to read as: Technology Products & Services, and a description of the classification is added.  

The classification of statistical code 2-14197 is amended to read as: Commercial and Residential Real Estate Agents and Brokers and Property Management Services. The classification description of this statistical code currently reads, in part, as: Policies covering the liability of real estate agents and brokers who are engaged in large commercial and residential real estate projects. That description is amended to now read as: Policies covering the liability of real estate agents and brokers and property managers who are engaged in large commercial and residential real estate projects.  

The classification of statistical code 2-22002 is amended to read as: Motorsports Racing Liability, and the description is amended to read as: Liability coverage for claims of spectators, participants or other third parties in connection with the operation of motorsports venues, or the staging or conduct of motorsports events or participation therein by teams and individuals.  

The classification of statistical code 2-22003 is amended to read as: Motorsports Racing and Motorsports Liability, and the description is amended to read as: Coverage for claims of spectators, participants or other third parties in connection with the operation of motorsports venues, or the staging or conduct of motorsports events or participation therein by teams and individuals.  

**Text of proposed rule and any required statements and analyses may be obtained from:** Sally Geisel, New York State Department of Financial Services, 1 State Street, New York, New York 10004, (212) 480-7608, email: sally.geisel@dfs.ny.gov  

**Data, views or arguments may be submitted to:** Hoda Nairooz, New York State Department of Financial Services, 1 State Street, New York, New York 10004, (212) 480-5595, email: hoda.nairooz@dfs.ny.gov  

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

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

**Consensus Rule Making Determination**  

This rulemaking merely updates Section 16.12 (e) to incorporate changes and additions to class 2 risks that were introduced by Public Notice published on May 10, 2017. In addition, Class Code 2-04002 (Federal Crime Program-Excess on Commercial Risks) is being deleted since the program is now defunct. Therefore, no person or entity is likely to object to this rulemaking. Accordingly, this rulemaking is determined to be a consensus rulemaking, as defined in State Administrative Procedure Act (“SAPA”) § 102(11), and is proposed pursuant to SAPA § 202(1)(b)(i). Therefore, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, or a Rural Area Flexibility Analysis.  

**Job Impact Statement**  

Amendment of the regulation will not adversely impact job or employment opportunities in New York, or have any adverse impact on self-employment opportunities, because the revision imposes no new or additional requirements on any insurer subject to the rule. The proposed rule merely updates Section 16.12(e) to incorporate changes and additions to class 2 risks that were introduced by Public Notice published on May 10, 2017. In addition, Class Code 2-04002 (Federal Crime Program-Excess on Commercial Risks) is being deleted since the program is now defunct. The Department of Financial Services believes that the amended rule will not result in any adverse job or employment impact.

**PROPOSED RULE MAKING**

**NO HEARING(S) SCHEDULED**

**Suitability in Life Insurance and Annuity Transacting**

**L.D. No. DFS-52-17-00020-P**

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

**Proposed Action:** Amendment of Part 224 (Regulation 187) of Title 11 NYCRR.  

**Statutory authority:** Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 308, 309, 2103, 2104, 2105, 2123, 2208, 3209, 4224, 4226, 4525 and art. 24  

**Subject:** Suitability in Life Insurance and Annuity Transactions.  

**Purpose:** Establish suitability standards for life insurance and clarify that a transaction must be in the best interest of the consumer.  

**Substance of proposed rule (Full text is posted at the following State website: http://www.dfs.ny.gov):** The words “life insurance” were added to the title of the regulation consistent with the amendments made to the text of the regulation and standards already established by the Insurance Law.  

Section 224.0 is revised to expand the purpose of the regulation to apply to life insurance and explain that the sections of the Insurance Law that establish standards of conduct for insurers and producers require any recommended transaction to be in the best interest of the consumer and to appropriately address the insurance needs and financial objectives of the consumer at the time of the transaction.  

Section 224.1 is amended to apply the standards set forth in the regulation to life insurance transactions.  

Section 224.2 is revised to replace the term “contract” with the term “policy” for consistency with the amendment.  

Section 224.3 adds new definitions and revises current definitions consistent with the broadening of the regulation, which now includes life insurance and transactions other than a purchase or replacement, such as modifications and elections of contractual provisions. The amendment to this section adds to the definition of “suitability information” for consistency purposes and adds a definition for the term “suitable.”  

Section 224.4 is amended so that the duties of insurers and producers, in addition to applying to annuity recommendations, also now apply to life insurance recommendations. Section 224.4 is amended to clarify that a producer, or an insurer where no producer is involved, shall act in the best interest of the consumer. The section is also amended to explain that the producer, or the insurer where no producer is involved, acts in the best interest of the consumer when the recommendation is based on the consumer’s suitability information and reflects the care that a prudent person would exercise in a similar situation without regard to the financial interests of any other party, when the transaction is suitable, and when the consumer has been reasonably informed of the consequences of the transaction. Section 224.4 is amended to add new subsections that: require a producer, or an insurer where no producer is involved, to disclose to the consumer the information used to provide the recommendation; prohibit a producer from making a recommendation unless the producer has a reasonable basis to believe that the consumer can meet the financial obligations under the policy; and prohibit a producer from stating that a recommendation is part of the financial or investment planning unless the
Section 224.4 is amended to state that no requirement under the regulation applies to every producer in the transaction, regardless of the level of contact made with the consumer. Section 224.4 is also amended to state that nothing in the regulation shall be construed to prohibit or limit compensation of a producer that is otherwise permitted under the Insurance Law.

Section 224.5 adds new subdivisions requiring an insurer to: establish and maintain procedures to prevent financial exploitation and abuse; provide relevant disclosures in an expedited fashion following the evaluation of a producer's recommendation; and provide relevant policy information and information required by Regulation 60 to a producer for evaluating a replacement transaction.

Section 224.6 deletes the word “insurance” that precedes the word “producer” to be consistent with the definition of “producer” in section 224.3(c).

Section 224.7 changes the placement of the words “Insurance Law” consistent with other recent regulatory revisions.

Text of proposed rule and any required statements and analyses may be obtained from: James V. Regalbuto, Deputy Superintendent for Life Insurance, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5027, email: james.regalbuto@dts.ny.gov.

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

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

Regulatory Impact Statement


2. Legislative objectives: IL sections 2103, 2104, 2110, 2123, 2208 and 3209 mandates disclosure requirements in the sale of life insurance and annuities. IL section 2123, among other things, prohibits an insurance agent, in- surance broker, or representative of an insurer from making misrepresentations or misleading statements about a life insurance policy or annuity contract or an incomplete comparison for the purpose of inducing, or tend- ing to induce, a person to lapse, forfeit or surrender any insurance policy.

3. Needs and benefits: 11 NYCRR 224 (Insurance Regulation 187) was first promulgated in 2013 and was based on the National Association of Insurance Commissioners’ Suitability in Annuity Transactions Model Regulation (“NAIC Model”). Since that time, the Department of Financial Services (“Department”) has monitored the financial market and the application of the regulation’s standards and procedures to annuity transactions. The Department has identified certain areas where additional protections are needed with respect to recommendations to consumers. The primary objective of this amendment is to address deficiencies in the regulation.

4. Costs: Insurers and insurance producers subject to this amendment likely will incur costs because of this amendment. The amendment expands the regulation’s current training requirement so that an insurer is responsible for ensuring that every insurance producer recommending the insurer’s life insurance contracts is adequately trained to make the recommendation. It also requires an insurer to establish and maintain procedures designed to prevent financial exploitation and abuse, and requires an insurer to provide a consumer with all relevant policy information to evaluate a transaction. The amendment further requires an insurer to provide a producer with all relevant replacement information necessary to evaluate suitability.

This amendment also requires a producer to provide a producer with all relevant replacement information necessary to evaluate suitability.

This amendment now requires a producer or an insurer to also disclose to the consumer all relevant considerations regarding information that provide the basis for a recommendation to enter into a life insurance transaction, and to document: any life insurance recommendation subject to 11 NYCRR § 224-4(a) and (b); a consumer’s refusal to provide suitability information, if any; and that a life insurance transaction is not recommended if a consumer decides to enter into a life insurance transaction that is not based on the producer’s or insurer’s recommendation.

However, the standards and procedures required by this amendment for recommendations to consumers with respect to life insurance are substantially similar to the standards and procedures already in place for annuities. Accordingly, any costs incurred by producers and insurers subject to this amendment that currently sell annuities should be minimal because they will already have in place for annuities the required supervisory system.
and training procedures to comply with this amendment. Also, producers already do this in their current business deferral of federal income tax on earnings and the non-taxability of earnings if any; and that a life insurance transaction is not recommended if a consumer decides to enter into a life insurance transaction that is not based on the producer’s or insurer’s recommendation.

3. Professional services: No professional service is required to meet the requirements of this amendment.

4. Compliance: The Department believes that the compliance requirements in this amendment may vary by size and business of the producer, and thus are difficult to estimate; the Department does not anticipate the costs to be significant.

Indeed, the Department anticipates that future costs may decrease over time by establishing one uniform best interest standard that will apply to all recommendations made for all product transactions. There are no costs associated with administrative functions of other government agencies or local governments.

5. Economic and technological feasibility: Although there may be minimal additional costs associated with complying with the amendment, compliance should be economically feasible for producers that are small businesses.

6. Potential minimizing adverse impact: There is little or no adverse economic impact on producers that are small businesses. The compliance, documentation and recordkeeping requirements of this amendment should have little impact on producers that are small businesses. Differing compliance, reporting requirements or timetables for producers that are small businesses are not feasible since the impact on regulated parties is already minimal and the standards established would be the same.

7. Small business and local government participation: Affected producers that are small businesses will have an opportunity to participate in the rule-making process once the proposed amendment is published in the State Register and posted on the Department’s website.
tion that is not based on the producer’s or insurer’s recommendation. Because insurers already adhere to these requirements for annuity transactions, they should be able to extend their current supervisory systems and training procedures to apply to life insurance, and should not need to establish new procedures or systems to comply with this amendment.

This amendment also requires an insurer, including an insurer located in a rural area, to: establish procedures designed to prevent financial exploitation and abuse; provide to the consumer all relevant policy information to evaluate a transaction; and provide to the producer all relevant policy information used to evaluate the suitability of a proposed replacement.

3. Costs: Insurers, including insurers located in a rural area, likely will incur costs because of this amendment. The amendment expands the training requirement so that an insurer is responsible for ensuring that every insurer and producer recommending the insurer’s life insurance contracts is adequately trained to make the recommendation. It also requires an insurer to establish and maintain procedures designed to prevent financial exploitation and abuse, and requires an insurer to provide a consumer with all relevant policy information to evaluate a transaction. The amendment further requires an insurer to provide a producer with all relevant replacement information necessary to evaluate suitability.

This amendment now requires a producer or an insurer to also disclose to a consumer all relevant suitability considerations and product information that provide the basis for a recommendation to enter into a life insurance transaction, and to document: any life insurance recommendation subject to 11 NYCRR § 224.4(a) and (b); a consumer’s refusal to provide suitability information, if any; and that a life insurance transaction is not recommended if a consumer decides to enter into a life insurance transaction that is not based on the producer’s or insurer’s recommendation.

However, the standards and procedures required by this amendment for recommendations to consumers with respect to life insurance are substantially similar to the standards and procedures already in place for annuities. Accordingly, any costs incurred by producers and insurers, including those located in a rural area, that currently sell annuities should be minimal, as the producers and insurers will already have in place for annuities the required supervisory system and training procedures to comply with this amendment. Also, producers already have procedures in place to document the recommendations that they make to consumers with respect to annuities. While the costs to implement this amendment may vary by size and business of the insurer and producer, and thus difficult to estimate, the Department of Financial Services ("Department") does not anticipate the costs to be significant.

Indeed, the Department anticipates that future costs may decrease over time by establishing one uniform best interest standard that will apply to all recommendations made for all product transactions. The costs associated with establishing procedures designed to prevent financial exploitation and abuse are expected to be minimal, because, as the Department understands it, many insurers have already developed procedures to prevent financial exploitation and abuse.

This amendment does not impose additional costs on the Department or state or local governments.

4. Minimizing adverse impact: This amendment applies to insurers and producers that do business in New York State, including those located in a rural area. The standards and procedures required by this amendment clarify the duties and obligations of producers under the standards of conduct established by Insurance Law §§ 2103, 2110, 2123 and 2208. The standards and procedures required by this amendment also clarify the duties and obligations of insurers under the standards of conduct established by Insurance Law § 4226 and Article 24. Due to standards of conduct already established by the Insurance Law, many insurers and producers, including those located in rural areas, already comply with the standards established in this amendment. This amendment applies uniformly to insurers and producers that do business in both rural and non-rural areas of New York State. The Department finds that this amendment does not impose any additional burden on insurers or producers located in rural areas.

5. Rural area participation: Insurers and producers in rural areas will have an opportunity to participate in the rulemaking process once the proposed amendment is published in the State Register and posted on the Department’s website.

Job Impact Statement
The Department of Financial Services finds that this rule will not adversely impact jobs or employment opportunities in New York. This amendment establishes suitability standards for life insurance policies and clarifies established suitability standards for annuity contracts and life insurance policies so that any transaction is in the best interest of the consumer. This amendment should not impact jobs or employment opportunities for insurers or producers.

NOTICE OF ADOPTION

Medical Use of Marihuana
L.D. No. HLT-37-16-00024-A
Filing No. 1068
Filing Date: 2017-12-08
Effective Date: 2017-12-27

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

Action taken: Amendment of Part 1004 and Subpart 55-2 of Title 10 NYCCR.

Statutory authority: Public Health Law, art. 33, title V-A, section 3369-a

Subject: Medical Use of Marihuana.

Purpose: To comprehensively regulate the manufacture, sale and use of medical marihuana.

Text or summary was published in the September 14, 2016 issue of the Register, L.D. No. HLT-37-16-00024-P.

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

Revised rule making(s) were previously published in the State Register on August 23, 2017.

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

Initial Review of Rule
As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment
The Department of Health (“Department”) received comments from various stakeholders, including but not limited to healthcare providers, registered organizations and legislators. Comments received included, but were not limited to, topics concerning manufacturing requirements, dispensing facility operations and laboratory testing. Based on the comments received, no changes are being made to the proposed rulemaking.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Implementing the Electronic Signatures and Records Act
L.D. No. ITS-52-17-00002-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 sections 540.1-540.3 of Title 9 NYCRR.

Statutory authority: Technology Law, sections 103, 303, 304 and 305; Real Property Law, section 291-i.

Subject: Implementing the Electronic Signatures and Records Act.

Purpose: Correcting outdated references to the name of ITS and the physical address of the Property Records Industry Association (PRIA).

Text of proposed rule: Sections 540.1(a) and (g) of Title 9 of the NYCRR are amended to read as follows:

540.1 Purpose, intent and applicability.
(a) The purpose of this Part is to establish standards and procedures governing the use and authentication of electronic signatures and the utilization of electronic records in accordance with article III of the State Technology Law, which establishes the Electronic Signatures and Records Act.

Office of Information Technology Services
Act (ESRA). ESRA requires the Office [for Technology (OFT)] of Information Technology Services (ITS), as the electronic facilitator, to establish rules governing the use of electronic signatures and records. ESRA recognizes the importance of technology to the State and the need to build a foundation for its acceptance, implementation and use by State agencies, local government, the private sector and citizens. Consistent with legislative intent, ESRA establishes that electronic signatures and records have the same force and effect as signatures and records produced by nonelectronic means and should be utilized to facilitate both business in, as well as the business of, New York State.

This Part also establishes standards to implement chapter 549 of the Laws of 2011 in relation to the electronic recording of instruments affecting real property by recording officers in New York State. Chapter 549 amended ESRA to allow for the use and acceptance of electronic signatures and records and with conveyances and other instruments recordable under article 39 of the Real Property Law. Chapter 549 also added a new section 291-i to the Real Property Law, permitting, but not requiring, recording officers to participate in electronic recording of instruments affecting real property. These rules and regulations are to prescribe standards to ensure that electronic records of instruments affecting real property documents are accurate, authentic, adequately preserved for long-term electronic storage and resistant to tampering.

Section 540.2(n) of Title 9 of the NYCRR is amended to read as follows: 540.2 Definitions.

(a) OFT means the Office of Information Technology Services (ITS), formerly OFT] ITS, as the electronic facilitator, is responsible for administering this Part. In accordance with ESRA, [OFT] ITS has the following functions, powers and duties including, but not limited to:

(1) request and receive information from governmental entities enabling [OFT] ITS to properly carry out its functions, powers and duties under ESRA and this Part;

(2) periodically review [OFT’s] ITS’s policies, technology standards and guidelines to ensure that they are consistent with national and international standards and current technology and business practices;

(3) establish advisory committees and working groups, or other bodies to assist and advise [OFT] ITS in carrying out the above duties and responsibilities.

(b) Governmental entities may define additional standards for electronic signatures and records after consulting with [OFT] ITS to ensure that such standards are consistent with ESRA and this Part.

This proposed rule and any required statements and analyses may be obtained from: Division of Legal Affairs, ITS, Empire State Plaza, PO Box 2062, Albany, NY 12220-0062, (518) 473-5115, email: its.sm.dla@its.ny.gov

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

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, ITS, as lead agency, has determined that the action described herein will have no effect on the environment and an E.I.S. is not needed.

Consensus Rule Making Determination

This proposed rule will amend 9 NYCRR Part 540 only to memorialize a change made to the formal name of our agency in the Laws of 2012, Chapter 55, Part O, Section 14, and to reflect a change in the physical address of the Property Records Industry Association (PRIA). Because the proposed rule will not impose any requirements on any entity, it will not have any effect on jobs or employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Concerning State Agency Internet Posting of Application Forms

Pursuant to the provisions of the State Administrative Procedure Act, NOTICE is hereby given of the following proposed rules:

Proposed Action: This is a consensus rule making to amend sections 552.3(b)(c), (d) and 552.5(a) of Title 9 NYCRR.

Statutory authority: Executive Law, section 164-d; State Technology Law, section 103

Subject: Concerning State Agency Internet posting of application forms.

Purpose: Correcting outdated references to the former name of ITS, and the Governor’s Office of Regulatory Reform (GORR).

Text of proposed rule: Section 552.1 of Title 9 of the NYCRR is amended to read as follows:

552.1 Purpose, intent and applicability. 164-d of the Executive Law provides that the State and every State agency, department, bureau, board, authority, office, commission, or any other instrumentality of the State shall make those various application forms developed and distributed by such agency or instrumentality for public use that are readily convertible to internet form and that are intended to be commonly used by the general public available on the internet. Section 164-d requires the New York State Office [for Technology (OFT), in consultation with the Governor’s Office of Regulatory Reform (GORR),] of Information Technology Services (ITS) to promulgate rules and regulations to implement the statute. The purpose of this Part is to establish a process for the entities that are subject to section 164-d to use in prioritizing the application forms to be made available on the internet and establishing the timing for making such application forms available on the internet.

Sections 552.3(c) and (d) of Title 9 of the NYCRR are amended to read as follows:

552.3 Inventory of prioritization process for application forms.

(c) The inventory prepared by the State agency pursuant to paragraph (a)(3) of this section shall be posted on a State agency website. The State agency website on which the inventory and priority list are posted shall include a conspicuous and direct link to the inventory and the priority list. [The inventory and the priority list shall also be filed with GORR in a format prescribed by GORR.]

(d) At least once per year, the State agency’s inventory and priority list shall be updated to reflect the development and distribution by the State agency of any new or redesigned application form that is intended to be commonly used by the general public. Such updated inventory and priority list shall be posted on the State agency website [and filed with GORR, in the format prescribed by GORR].

Section 552.5(a) of Title 9 of the NYCRR is amended to read as follows:

552.5 Miscellaneous provisions.

(a) [OFT, in consultation with GORR,] ITS is responsible for administering this Part. [OFT, in consultation with GORR,] ITS may request and shall receive such assistance and information from State agencies as may be necessary or convenient to properly administer this Part.

Text of proposed rule and any required statements and analyses may be obtained from: Division of Legal Affairs, ITS, Empire State Plaza, PO Box 2062, Albany, NY 12220-0062, (518) 473-5115, email: its.sm.dla@its.ny.gov

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

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, ITS, as lead agency, has determined that the action described herein will have no effect on the environment and an E.I.S. is not needed.

Consensus Rule Making Determination

This proposed rule will amend 9 NYCRR Part 552 only to memorialize a change made to the formal name of our agency in the Laws of 2012, Chapter 55, Part O, Section 14, and to remove outdated references to the Governor’s Office of Regulatory Reform (GORR), which was discontinued by Chapter 60 of the Laws of 2011 and pursuant to Executive Order dated April 7, 2011. Other than these ministerial corrections, there are no other changes to the rule.
Consistent with the State Administrative Procedure Act §§ 102(11) and 202(1)(b)(1), the Office of Information Technology Services has determined that no person is likely to object to the adoption of the rule as written, as it is non-controversial and merely makes technical changes to replace obsolete references.

**Job Impact Statement**

A JIS is not required for this amendment. ITS is proposing this consensus rulemaking merely to memorialize a change made to the formal name of our agency in the Laws of 2012, Chapter 55, Part O, Section 14; changes in references from OIT to ITS made in Executive Law section 164-d; and the discontinuance of the Governor’s Office of Regulatory Reform pursuant to Chapter 60 of the Laws of 2011, and the April 27, 2011 Executive Order No. 14. Because the proposed rule will not impose any requirements on any entity, it will not have any effect on jobs or employment opportunities.

**PROPOSED RULE MAKING**

**NO HEARING(S) SCHEDULED**

Providing Public Access to the Records of the Office of Information Technology Services

**I.D. No.**  ITS-52-17-00004-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 sections 550.1-550.2, 550.5-550.6 and 550.8 of Title 9 NYCRR.

**Statutory authority:** Public Officers Law, art. 6; Executive Law, sections 206-a(11), 208; L. 2012, ch. 55, part O, section 14; Technology Law, section 103

**Subject:** Providing public access to the records of the Office of Information Technology Services.

**Purpose:** Correcting outdated references to the name of ITS, a job title in the ITS Division of Legal Affairs, and gender references.

**Text of proposed rule:** Section 550.1 of Title 9 of the NYCRR is amended to read as follows:

550.1 Purpose and scope.

The people’s right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society. This Part provides information concerning the procedures by which records may be obtained from the New York State Office [for Technology] of Information Technology Services.

Section 550.2 of Title 9 of the NYCRR is amended to read as follows:

550.2 Definitions.

(a) The term executive deputy commissioner means the executive deputy commissioner of the New York State Office [for Technology] of Information Technology Services.

(b) The term office means the New York State Office [for Technology] of Information Technology Services.

Section 550.5 of Title 9 of the NYCRR is amended to read as follows:

550.5 Requests for public access to records.

(a) A request for records within the possession of the office shall be in writing. Such request shall be addressed to the Records Access Officer, New York State Office [for Technology] of Information Technology Services, State Capitol/Empire State Plaza, P.O. Box 2062, Albany, NY 12220.

(b) In the event that the office receives a request for another agency’s records, or within seven business days, excluding the day of the proper commencement of the appeal, determine the right of access to such records. Where he or she decides the denial of access was improper, he or she shall order the records access officer to allow the requester access to such records. Where he or she decides the denial of access from disclosure was improper, he or she shall order the records access officer to except such records from disclosure. Where he or she decides the denial of access was correct, he or she shall state the reason or reasons therefor and mail a copy of his or her decision to the appellant on or before the aforesaid period by registered or certified mail of the United States Postal Service and to his or her agent or authorized representative, if any, by ordinary mail. In addition, the records appeals officer shall immediately, upon receipt, forward a copy of such appeal to the Committee on Open Government. He or she shall also forward to such committee a copy of the ensuing decision.

Consistent with the State Administrative Procedure Act §§ 102(11) and 202(1)(b)(1), the Office of Information Technology Services has determined that no person is likely to object to the adoption of the rule as written, as it is non-controversial and merely makes technical changes to replace obsolete references.

**Job Impact Statement**

This proposed rule will amend 9 NYCRR Part 550 only to memorialize a change made to the formal name of our agency in the Laws of 2012, Chapter 55, Part O, Section 14; correct obsolete statutory references; correct a current job title in the ITS Division of Legal Affairs; and to correct and conform all gender references. Other than these ministerial corrections, there are no other changes to the rule.

Consistent with the State Administrative Procedure Act §§ 102(11) and 202(1)(b)(1), the Office of Information Technology Services has determined that no person is likely to object to the adoption of the rule as written, as it is non-controversial and merely makes technical changes to replace obsolete references.

**PROPOSED RULE MAKING**

**NO HEARING(S) SCHEDULED**

Providing Access to Personal Information

**I.D. No.**  ITS-52-17-00005-P

Pursuant to the provisions of the State Administrative Procedure Act, Notice is hereby given of the following proposed rule:

**Proposed Action:** This is a consensus rule making to amend sections 551.1-551.3, 551.5-551.8, 551.10 and 551.11 of Title 9 NYCRR.

**Statutory authority:** Public Officers Law, art. 6-A, section 94(2); Executive Law, section 206-a(11)

**Subject:** Providing access to personal information.

**Purpose:** To correct outdated references to the name of ITS and a job title in the ITS Division of Legal Affairs.

**Text of proposed rule:** Section 551.1 of Title 9 of the NYCRR is amended to read as follows:
551.1 Purpose and scope.
(a) It is the responsibility and the intent of the Office [for Technology] of Information Technology Services to fully comply with the provisions of article 6-A of the Public Officers Law, the Personal Privacy Protection Law.
(b) The Office [for Technology] of Information Technology Services shall maintain in its records only such personal information that is relevant and necessary to accomplish a purpose of the agency that is required to be accomplished by statute or executive order, or to implement a program specifically authorized by law.
(c) The Office [for Technology] of Information Technology Services seeks to ensure that all records pertaining to or used with respect to individuals are accurate, relevant, timely and complete.

Section 551.2 of Title 9 of the NYCRR is amended to read as follows:
551.2 Definitions.

For purposes of this Part:
(d) The term office means the New York State Office [for Technology] of Information Technology Services or its successor.

Section 551.3 of Title 9 of the NYCRR is amended to read as follows:
551.3 Proof of identity.
(a) When a request is made pursuant to this Part in person, or when records are made available in person following a request made by mail, the Office [for Technology] of Information Technology Services may require identification, such as a driver’s license, an identifier assigned to the data subject by the Office [for Technology] of Information Technology Services, a photograph or similar information that confirms that the records sought pertain to the data subject.
(b) When a request is made pursuant to this Part, by mail, the Office [for Technology] of Information Technology Services may require verification of a signature or inclusion of an identifier generally known only by a data subject or similar appropriate identification.

Section 551.5 of Title 9 of the NYCRR is amended to read as follows:
551.5 Public inspection of records.
(a) Records shall be made available at the main office of the Office [for Technology] of Information Technology Services, which is located at:
NYS Office [for Technology] of Information Technology Services
Empire State Plaza
Swan Street Building, Core 4
Albany, NY 12223
(b) The Office [for Technology] of Information Technology Services shall accept requests for records and produce records during the hours 9:00 a.m. through 12:00 p.m. and 1:00 p.m. through 4:00 p.m.

Section 551.6 of Title 9 of the NYCRR is amended to read as follows:
551.6 Requests for records and information.
(a) A request shall reasonably describe the record to which access is sought or about which information is desired. Whenever possible, the data subject should supply identifying information that assists the Office [for Technology] of Information Technology Services in locating the records sought.
(d) Within five business days of the receipt of a proper request, the Office [for Technology] of Information Technology Services shall provide access to the record, deny access in writing explaining the reasons therefore, or acknowledge the receipt of a request in writing, stating the approximate date when the request will be granted or denied, that date shall not exceed 30 days from the date of acknowledgment.

Section 551.7 of Title 9 of the NYCRR is amended to read as follows:
551.7 Designation of privacy compliance officer.
(a) The executive deputy commissioner of the Office [for Technology] of Information Technology Services shall designate a privacy compliance officer who is responsible for ensuring that the Office [for Technology] of Information Technology Services complies with the provisions of the Personal Privacy Protection Law and with these regulations. The director may, with respect to any one or more privacy compliance issues, delegate their authority hereunder to an appropriate employee of the Office [for Technology] of Information Technology Services.
(b) The address of the privacy compliance officer is:
Privacy Compliance Officer
NYS Office [for Technology] of Information Technology Services
State Capitol ESP, P.O. Box 2062
Albany, NY 12220-0062
(d) The privacy compliance officer is responsible for:
(3) ensuring that Office [for Technology] of Information Technology Services personnel take one of the following actions upon locating the record sought:
Section 551.8 of Title 9 of the NYCRR is amended to read as follows:
551.8 Amendment of records.
(b) Within 30 days of a request from a data subject for correction or amendment of a record or personal information that is reasonably described and that pertains to the data subject, the Office [for Technology] of Information Technology Services shall:
Section 551.10 of Title 10 of the NYCRR is amended to read as follows:
551.10 Appeal.
(a) Any person denied access to a record or denied a request to amend or correct a record or personal information pursuant to section 551.9 of this Part may, within 30 days of such denial, appeal to the [deputy] Counsel of the Office [for Technology] of Information Technology Services.
(b) The [deputy] Counsel may, with respect to any one or more appeals, delegate its authority hereunder to any assistant counsel of the Office [for Technology] of Information Technology Services.

(f) The Office [for Technology] of Information Technology Services shall immediately forward to the Committee on Open Government a copy of any appeal made pursuant to this section upon receipt, the determination thereof and the reasons therefore at the time of such determination.

Section 551.11 of Title 9 of the NYCRR is amended to read as follows:
551.11 Statement of disagreement by data subject.
(a) If correction or amendment of a record or personal information is denied in whole or in part upon appeal, the determination rendered pursuant to the appeal shall inform the data subject of the right to:
(1) file with the Office [for Technology] of Information Technology Services, a statement of reasonable length setting forth the data subject’s reasons for disagreement with the determination;
(b) Upon receipt of a statement of disagreement by a data subject, the Office [for Technology] of Information Technology Services shall:
(c) When providing a data subject’s statement of disagreement to a person or governmental unit in conjunction with a disclosure made pursuant to paragraph (d), (i) or (1) of subdivision one of section 96 of the Public Officers Law, the Office [for Technology] of Information Technology Services may also include a concise statement of its reasons for not making the requested amendment or correction.

Text of proposed rule and any required statements and analyses may be obtained from: Division of Legal Affairs, ITS, Empire State Plaza, PO Box 2062, Albany, NY 12220-0062, (518) 473-5115, email: its.sm.dla@its.ny.gov

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

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, ITS, as lead agency, has determined that the action described herein will have no effect on the environment and an E.I.S. is not needed.

Consensus Rule Making Determination
This proposed rule will amend 9 NYCRR Part 551 only to memorialize a change made to the formal name of our agency in the Laws of 2012, Chapter 55, Part O, Section 14, and to correct a job title in the ITS Division of Legal Affairs. Other than these ministerial corrections, there are no other changes to the rule.

Consistent with the State Administrative Procedure Act §§ 102(11) and 202(1)(b)(1), the Office of Information Technology Services has determined that no person is likely to object to the adoption of the rule as written, as it is non-controversial and merely makes technical changes to replace obsolete references.

Job Impact Statement
A JIS is not required for this amendment. ITS is proposing this consensus rulemaking merely to memorialize a change made to the formal name of our agency in the Laws of 2012, Chapter 55, Part O, Section 14 and to correct a job title in the ITS Division of Legal Affairs. Because the proposed rule will not impose any requirements on any entity, it will not have any effect on jobs or employment opportunities.
Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

L.D. No. PAS-41-17-00002-A
Filing Date: 2017-12-12
Effective Date: 2018-01-01

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

Action taken: Decrease in production rates.
Statutory authority: Public Authorities Law, sections 1005, 3rd undesignated paragraph and 1005(6)
Subject: Rates for the Sale of Power and Energy.
Purpose: To align rates and costs.

Substance of final rule: The Power Authority’s Notice of Proposed Rulemaking published on October 11, 2017, proposed to decrease the revenue collection through production rates and billing of its Westchester County Governmental Customers by 2.42%. Based on further analysis by staff, the Authority determined that the production rates should be decreased by 6.72%. The new production rates will be effective commencing with the January 2018 billing period.

Final rule as compared with last published rule: Substantial revisions were made in First Part.

Text of rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street - 11-P, White Plains, NY 10601, (914) 390-8085, email: karen.delince@nypa.gov

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.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Oversight and Support of Clean Energy Fund and Related NYSEARDA Activities

L.D. No. PSC-52-17-00014-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 the New York State Energy Research and Development Authority’s (NYSEARDA) petition regarding access to utility data and legacy reporting requirements.

Statutory authority: Public Service Law, sections 3(2), 66(1), (3), (4) and (5)
Subject: Oversight and support of Clean Energy Fund and related NYSEARDA activities.
Purpose: To support and monitor the deployment of clean energy technology.

Substance of proposed rule: The Public Service Commission is considering the petition filed by the New York State Energy Research and Development Authority (NYSEARDA) on December 6, 2017 regarding access to utility data and legacy reporting requirements. NYSEARDA requests that the Commission issue an order establishing a process for NYSEARDA to request data from the utilities and establishing a process for the utilities to assess NYSEARDA’s dataset requests and to provide the requested data. NYSEARDA also requests that the Commission determine the appropriate data protection protocols for such transfers. In addition, NYSEARDA requests that the Commission modify reporting requirements for the SBC III and SBC IV programs in recognition of the end of those programs. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. 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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Development of an Aggregation Standard for Release of Customer Usage Information That Protects the Privacy of Customers

L.D. No. PSC-52-17-00015-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 whether to implement the Utility Energy Registry, and is seeking further input regarding the appropriate balance between the benefit of making more aggregated data available and the need to maintain customer privacy.

Proposed action: The Commission is considering whether to implement the Utility Energy Registry, and is seeking further input regarding the appropriate balance between the benefit of making more aggregated data available and the need to maintain consumer privacy. Among the methods that should be explored are: (1) for data sets that do not pass the privacy screen at the most granular level (i.e., municipality) combine the data sets with other municipalities (i.e., county); (2) recalibrate the privacy standard (in general or for certain aggregation groups) to optimize the benefits of making more information available (e.g., improved local energy planning, improved targeting of clean energy products and services) while continuing to maintain adequate privacy protection; or (3) where aggregation group does not pass the privacy screen, allow the CCA Administrator, and/or municipalities, to obtain the data from utilities pursuant to Data Security Agreement. The full text of the Notice Initiating Matter and Seeking Comment on Utility Energy Registry may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the proposed methods 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.

(17-M-0315SP1)

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

SUEZ O-N's Rates of the Forest Park Systems for the Provision of Water

I.D. No. PSC-52-17-00016-P

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

Proposed Action: The Public Service Commission is considering a tariff filing filed by SUEZ Water Owego-Nichols Inc. (SUEZ O-N) to increase its annual revenues of the Forest Park Systems by approximately $298,221 or 48.52%, to become effective May 1, 2018.

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

Subject: SUEZ O-N’s rates of the Forest Park Systems for the provision of water.

Purpose: To consider an increase in SUEZ O-N’s annual water revenues of the Forest Park Systems by approximately $298,221 or 48.52%.

Substance of proposed rule: The Commission is considering tariff revisions filed by SUEZ Water Owego-Nichols Inc. (SUEZ O-N) to P.S.C. No. 1 – Water, to increase the Company’s annual revenues for the Forest Park Systems by approximately $298,221 or 48.52%. SUEZ O-N states that the rate increase is necessary in order to recover the investment it has made in the Forest Park systems as well as recovery of operating expenses going forward. The proposed amendment has an effective date of May 1, 2018. The full text of the rate filing may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. 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.

(17-T-0752SP1)

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Daily Delivery Service (DDS) Program; Winter Bundled Sales Service (WBSS) and Managed Supply Service (MSS) Programs

I.D. No. PSC-52-17-00018-P

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


Statutory authority: Public Service Law, sections 65 and 66

Subject: Daily Delivery Service (DDS) Program; Winter Bundled Sales Service (WBSS) and Managed Supply Service (MSS) Programs.

Purpose: To consider modifications to the DDS Program and the elimination of the expired WBSS and MSS Programs.

Substance of proposed rule: The Public Service Commission (Commission) is considering a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) on December 1, 2017, to revise its gas tariff schedule, P.S.C. No. 9 – Gas. Con Edison proposes to modify its Daily Delivery Service Program to implement a mandatory 12-month pilot program for the release of certain allocations of Con Edison’s storage field capacity and associated pipeline capacity to Marketers and/or their Agents. Con Edison also proposes to eliminate two expired programs from its tariff schedule, Winter Bundled Sales Service Program and Managed Storage Supply Program. The proposed amendments have an effective date of April 1, 2018. The full text of the filing may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.
Proposed Action: The Commission is considering the petition of Bruns Associates, LLC to submeter electricity at 291 North Thompson Avenue, Rotterdam, New York.

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

Subject: Petition to submeter electricity.

Purpose: To consider the petition of Bruns Associates, LLC to submeter electricity.

Substance of proposed rule: The Commission is considering the petition of Bruns Associates, LLC (Owner), filed on November 14, 2017, to submeter electricity at 291 North Thompson Avenue, Rotterdam, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid (National Grid). The Owner states that the final mailing address for the residential complex has not yet been set. By stating its intent to submeter electricity, Bruns Associates, LLC has requested authorization to take electric service from National Grid and then distribute and meter that electricity to tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission’s regulations at 16 NYCRR Part 96. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. 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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Submeter Electricity

I.D. No. PSC-52-17-00019-P

Pursuant to the Provisions of the State Administrative Procedure Act, Notice is hereby given of the following proposed rule:

Purpose:

To consider the petition of Bruns Associates, LLC to submeter electricity.

Statutory Authority:

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

Subject:

Petition to submeter electricity.

Purpose:

To consider the petition of Bruns Associates, LLC to submeter electricity.

Substance of proposed rule:

The Commission is considering the petition of Bruns Associates, LLC (Owner), filed on November 14, 2017, to submeter electricity at 291 North Thompson Avenue, Rotterdam, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid (National Grid). The Owner states that the final mailing address for the residential complex has not yet been set. By stating its intent to submeter electricity, Bruns Associates, LLC has requested authorization to take electric service from National Grid and then distribute and meter that electricity to tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission’s regulations at 16 NYCRR Part 96. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. 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.

(17-G-0745SP1)
mean any natural person whose personal information has been wrongfully obtained by another, and is used in any way that involves fraud or deception, typically for economic gain.

(b) Personal information. The term "personal information" shall mean any information concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify such natural person.

(c) Consumer Reporting Agency. The term "consumer reporting agency" means any person who, for monetary fees, dues, or on a cooperative, non-profit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports or investigative consumer reports to third parties.

(d) Consumer credit reporting agency. The term "consumer credit reporting agency" means a consumer reporting agency that regularly engages in the practice of assembling or evaluating and maintaining, for the purpose of furnishing consumer credit reports to third parties bearing on a consumer’s credit worthiness, credit standing, or credit capacity, public record information and credit account information from persons who furnish that information regularly and in the ordinary course of business.

(e) Division. The term “Division” shall mean the Division of Consumer Protection.

(f) Department. The term “Department” shall mean the Department of State.

(g) Program. The term “Program” shall mean the Identity Theft Prevention and Mitigation Program.

§ 226.3 Consumer Assistance.

Persons requesting assistance from the Division to respond to an identity theft concern shall complete a consumer complaint assistance form as prescribed by the Division. The Division, where appropriate, under the authority of the Attorney General, Department of Financial Services and/or any other appropriate law enforcement or regulatory entity for action.

The Attorney General, Department of Financial Services and/or any other appropriate law enforcement or regulatory entity for action.

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

Regulatory Impact Statement

1. Statutory authority:

New York Executive Law § 91 authorizes the Secretary of State to: “adopt and promulgate such rules which shall regulate and control the exercise of the powers of the department of state.” Additional authority is set forth in Executive Law § 94(6), which authorizes the Secretary of State to “implement other powers and duties by regulation,” and Executive Law § 94(9)(i) which authorizes the Secretary of State to “promulgate rules and regulations to administer the identity theft prevention and mitigation program.”

2. Legislative objectives:

Chapter 62 of the Laws of 2011 consolidated the Consumer Protection Board within the Department of State as a division under the supervision of the Secretary of State. Section 94-a of the Executive Law provides the Division of Consumer Protection with general authority to act in the interests of consumers “in order to protect the people of New York state from economic harm.” The Division has long been concerned with the psychologically destructive and economically catastrophic effects of identity theft. It has engaged in public education and outreach, represented the interests of identity theft victims and acted as a liaison between them and other entities, both governmental and private. These rules would augment such efforts by establishing an “identity theft prevention and mitigation program” (Program). Among other things, the Program sets forth complaint procedures for consumers and provides for the timely flow of information and assistance critical to consumers exposed to identity theft.

In order to steal an individual’s identity, the criminal must acquire the victim’s personal information. Of great value is the victim’s financial information and credit history, which provides the criminal with a roadmap for the looting of the victim’s wealth. Such information is aggregated, maintained and analyzed by Consumer Credit Reporting Agencies (CCRAs), which provide “consumer credit reports” to entities doing business with consumers. Consumers seeking to obtain such things as mortgages, apartment rentals, and loans must consent to such “credit check” or go without. It is critical to the economic health of all that such information be maintained in the strictest confidence and used only for its intended purpose. Unfortunately, recent events have shown that such is not the case. The massive data breach experienced by Equifax, a large C CRA, has exposed millions of New Yorkers to fraud and economic ruin. The “theft” of this individual’s identities begins with such breach. Equifax (and other such entities experiencing data breaches) is under an obligation to consumers to provide timely information concerning the status of their credit histories, what is being done to protect them and how they can protect themselves. These rules include mechanisms to facilitate the provision of such information and assistance by: 1) clarifying the status of a “victim of identity theft” as inclusive of an individual who has been victimized by a security breach; 2) requiring, among other things, the filing of a form with the Division that CCRAs establish and notify the Division of a point of contact for Division inquiry and fact finding; and for such point of contact to be available for such dialogue for general matters during regular business hours and within 24 hours in event of a notification of a security breach, and 3) the disclosure to the Division and consumers of proprietary

(g) A listing and description of all business affiliations and contractual relationships where such business affiliations or contractual relationships relate to the provision of any products or services advertised to consumers as products or services available for the prevention or mitigation of identity theft.

(h) The consumer credit reporting agency’s DUNNS number.

§ 226.7 Consumer Information.

Any advertisements or other material promoting proprietary products offered to consumers by a consumer credit reporting agency for the prevention or mitigation of identity theft may prominently disclose any fees associated with the purchase or use of such product, including, if offered on a trial basis, any and all fees charged for its purchase or use after the trial period and the requisites of cancellation of such continued use.

§ 226.8 Violations.

A violation of any of the rules set forth in this Part shall be referred to the Attorney General, Department of Financial Services and/or any other appropriate law enforcement or regulatory entity for action.

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 March 11, 2018.

Text of rule and any required statements and analyses may be obtained from: Daniel E. Shapiro, Department of State, One Commerce Plaza, Albany, NY 12231, (518) 474-6740, email: daniel.shapiro@dos.ny.gov

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

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

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

It is apparent from the nature and purposes of this rule that it will not have a substantial adverse impact on jobs or employment opportunities. This rule will primarily apply to three large Consumer Credit Reporting Agencies (CCRAs). The rule will require, among other things, that (CCRAs): establish and notify the Division of a point of contact for Division inquiry and fact finding, ensure such point of contact be available for such dialogue for general matters during regular business hours and within 24 hours in event of a notification of a security breach, and provide disclosure to the Division and consumers of proprietary products offered by the CCRA to consumers for the prevention of identity theft, with information as to the fees and contractual provisions associated therewith. It is anticipated that such requirements would have little to no impact on jobs.

Comments will be received and entertained during the public comment period associated with the Proposed Rulemaking portion of this Notice.

Workers’ Compensation Board

NOTICE OF ADOPTION

Impairment Guidelines for Schedule Loss of Use Evaluations

I.D. No. WCB-36-17-00015-A
Filing No. 1120
Filing Date: 2017-12-18
Effective Date: 2018-01-01

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

Action taken: Addition of section 325-1.6 to Title 12 NYCCR.

Statutory authority: Workers’ Compensation Law, sections 15(30)(x), 117 and 141

Subject: Impairment Guidelines for Schedule Loss of Use Evaluations.

Purpose: Incorporate by reference Impairment Guidelines.

Text of final rule: A new section 325-1.6 is added to Title 12 NYCCR as follows:

325-1.6 The Impairment Guidelines for Schedule Loss of Use Determinations

   a) All evaluations of permanent impairment for use in a schedule loss of use determination shall be performed in accordance with the Workers’ Compensation Guidelines for Determining Impairment, First Edition, XXXXXXX, effective January 1, 2018, which is herein incorporated by reference. Such evaluations must be completed in the format prescribed by the Chair.

   b) Obtaining the Workers’ Compensation Guidelines for Determining Impairment. The Workers’ Compensation Guidelines for Determining Impairment incorporated by reference herein may be examined at the office of the Department of State, 90 Washington Avenue, Albany, New York, 12231, the Legislative Library, the libraries of the New York State Supreme Court, and the district offices of the Board. Copies may be downloaded from the Board’s website or obtained from the Board by submitting a request in writing, with the appropriate fee, identifying the specific guideline requested and the choice of format to Publications, New York State Workers’ Compensation Board, 328 State Street, Schenectady, New York 12305-2318. Information about the Workers’ Compensation Guidelines for Determining Impairment can be requested by email at GENERAL_INFORMATION@wcb.ny.gov, or by telephone at 1-800-781-2362. The Workers’ Compensation Guidelines for Determining Impairment are available on paper or compact disc. A fee of ten dollars will be charged for the guideline requested in paper format, and a fee of five dollars will be charged for a compact disc. Payment of the fee shall be made by check or money order payable to “Chair WCB.”

Final rule as compared with last published rule: Nonsubstantive changes were made in section 325-1.6(a).

Revised rule making(s) were previously published in the State Register on November 22, 2017.

Text of rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers’ Compensation Board, 328 State Street, Office of General Counsel, Schenectady, NY 12305, (518) 486-9564, email: regulations@wcb.ny.gov

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

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not required because the changes made to the proposed rule does not necessitate revision to the previously published document. The changes to the text are non-substantive corrections. These changes do not affect the meaning of any statements in the prior document.

Initial Review of Rule
As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment
The Chair and Board received more than 50 formal written comments from Survey Monkey, emailed comments, and regular mail. Additionally, the Chair and Board received more than 150 form letters from individuals.

The Board received approximately 18 form letters opining that the revised proposal was a substantial improvement over the September draft of Use opinions that remain unresolved prior to the implementation of the final version of the new guidelines, and requesting that existing SLU opinions be “grandfathered in”.

The Board received a comment from an employee advocate group agreeing with many of the changes from the first proposal to the second, especially the removal of the “cooperation” language.

The Board received a detailed comment from an employee advocacy group that stated that the November proposal is much improved, but objected to several specific sections of the proposed impairment guidelines, including the reduction in some awards, and the change in the thumb measure. The Board did change the thumb measure from 60 degrees in the proposal to 90 degrees.

The Board received a comment from three comments, from individuals and carriers, that the proposals are not based on advancements in modern medicine.

The Board received a comment from a claimant attorney requesting the regulations be amended to include what happens if there are Schedule Loss of Use opinions that remain unresolved prior to the implementation of the final version of the new guidelines, and requesting that existing SLU opinions be “grandfathered in”.

The Board received a comment from a carrier attorney suggesting the addition of a note to the impairment guidelines to ensure range of motion is compared to the contralateral side, as well.

The Board received approximately five comments from health care providers suggesting the addition of various other medical conditions, including spine injuries and tinnitus among others, as well as several small specific suggestions for changes to the guidelines.

The Board received several comments from carriers, third party administrators, self-insured employers, and businesses objecting to the most recent proposal, citing unfairness to employers and preferring the September proposal, especially the “loss of earning power” factor. The Board received many comments from the last round of proposals objecting on behalf of employees, and the most recent proposal takes those comments into account. No change to the proposal has been made in response to this comment.

The Board received several comments from health care providers and claimant attorneys supporting the fairness of this revised proposal as a whole.

Changes to the Proposal
• Section 2.4: The Board changed the thumb measure from 60 degrees to 90 degrees.

PROPOSED RULE MAKING

Establishment of Prescription Drug Formulary

L.D. No. WCB-52-17-00021-P

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

Proposed Action: Addition of section 440.2(g) and Part 441 to Title 12 NYCRR.

Statutory authority: Workers’ Compensation Law, sections 13-p, 117 and 142.

Subject: Establishment of Prescription Drug Formulary.

Purpose: Establishment of a drug formulary that includes high-quality and cost-effective preauthorized medication.

Text of proposed rule: Section 440.2 of Title 12 of NYCRR is amended to add a new subdivision (g) as follows:

(a) Any rebates referred to the designated pharmacy shall be passed through in full to the insurance carrier or self-insured employer to ensure savings to the overall cost of the program. Such rebates shall be reported annually to the carrier or self-insured employer and reported to the Chair upon request.

Subchapter M of Chapter V of Title 12 of NYCRR is amended to add a new Part 441 as follows:

Part 441

1. Definitions.
   (a) “Preferred drug” means a drug on the New York Pharmacy Formulary that does not require prior authorization The preferred status of a drug is designated in the column with the heading labeled “Preferred/Non-Preferred”.
   (b) “Non-PREFERRED drug” means a drug on the New York Pharmacy Formulary that requires prior authorization by the insurance carrier or self-insured employer before dispensing. The Non-Preferred status of a drug is designated in the column with the heading labeled “Preferred/Non-Preferred”.
   (c) “Unlisted drug” means a drug that does not appear on the New York Pharmacy Formulary and which is one of the following: a Federal Drug Administration (FDA) approved prescription drug; an FDA-approved nonprescription drug; or a prescription over the counter drug marketed pursuant to an FDA OTC Monograph.
   (d) “Compound drug” means a drug that is created by combining one or more active pharmaceutical ingredients, and one or more inactive ingredients, to meet specific patient medical needs that presumably cannot be met with FDA-approved prescription drugs, FDA-approved nonprescription drugs, or other drugs commercially available in the marketplace. For the purposes of this subchapter, a compound drug shall be treated as the same as a Non-Preferred drug but at all times shall be subject to federal law governing compounding, including title 21, United States Code, sections 353a, 353a-1, 353b.
   (e) “Generic drug” means “an FDA-approved drug that is therapeutically equivalent to a brand name drug as determined by the FDA’s designation of the drug with the Therapeutic Equivalence Evaluation Code designation as an “A” product in the ‘Approved Drug Products with Therapeutic Equivalence Evaluations’ (commonly referred to as the Orange Book).”
   (f) “New York Pharmacy Formulary” or “Pharmacy Formulary” means the drug list incorporated by reference in section 441.3 of this Part.
   (g) “Dispense” or “dispensed” means (1) the furnishing of a drug upon a prescription from a physician or other health care provider acting within the scope of his or her practice, or (2) the furnishing of drugs directly to a patient by a physician acting within the scope of his or her practice and pursuant to the dispensing limitations set forth in section 6807(2) of the Education Law.
   (h) “Special Fill policy” means the policy set forth in subparagraph (a) of paragraph (5) of subdivision (d) of this section, allowing dispensing of identified Non-PREFERRED drugs without obtaining prior authorization where the drug is dispensed at the initial treatment visit following a workplace injury, where the visit occurs within seven days of the date of injury.
   (i) “Perioperative Fill policy” means the policy set forth in paragraph (2) of subdivision (e) of section 441.4 of this Part, allowing dispensing of identified Non-PREFERRED drugs without obtaining prior authorization where the drug is dispensed within the perioperative period and meets specified criteria. Perioperative period refers to the four days before and after the patient goes into the hospital, clinic, or doctor’s office for surgery; with the day of surgery being day zero.
   (j) “FDA-approved drug” means a prescription or nonprescription drug that has been approved by the FDA under the Federal Food, Drug, and Cosmetic Act, title 21, United States Code, section 301 et seq.
   (k) “FDA OTC Monograph” means a data standards manual (DSM) established by the FDA setting forth acceptable ingredients, doses, formulations, and labeling for a class of over the counter drugs.
   (l) “Prior Authorization” means the review procedure conducted prior to the dispensing of a Non-PREFERRED drug, or a drug prescribed that is not in accordance with the Medical Treatment Guidelines.

Section 440.2 of Title 12 of NYCRR is amended to add a new subdivision (g) as follows:

440.2(g) Definitions.

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Rule Making Activities
(b) On or after December 31, 2018, every refill and renewal prescription for a non-preferred or unlisted drug shall be dispensed consistent with the pharmacy formulary regardless of the date of accident or disablement unless prior authorization is received to dispense a non-preferred or unlisted drug.

c) No later than October 1, 2018, the insurance carrier or self-insured employer shall identify claims that have been prescribed for an unlisted or Non-Preferred drug and provide written notification to the injured employee and Treating Medical Provider, which contains the following information: (a) the notice of the impending date and applicability of the New York Pharmacy Formulary and (b) a process for determining an equivalent preferred drug as well as the process to request prior authorization for a Non-preferred or unlisted drug.

§ 441.3 Incorporation by Reference

The New York Pharmacy Formulary incorporated by reference herein, lists the drug ingredient, preferred status, and drug class. Copies of the formulary may be downloaded from the Board’s website free of charge. The formulary may be examined at the office of the Department of State, 99 Washington Avenue, Albany, New York 12231, the Legislative Library, the libraries of the New York State Supreme Court, and the district offices of the Board, or obtained from the Board by submitting a request in writing, with a fee of five dollars, to the New York State Workers’ Compensation Board, 328 State Street, Schenectady, New York 12305-2318. Payment of the fee shall be made by check or money order payable to “Chair WC.” Information about the New York Pharmacy Formulary can be requested by email at GENERAL_INFORMATION@wcb.ny.gov, or by telephone at 1-800-962-WCB.

§ 441.4 Prior Authorization (Utilization Review) for Non-Preferred or Unlisted Drugs.

(a) When a medical provider determines that a Non-Preferred drug or unlisted drug, or a brand-name drug with a generic equivalent, is appropriate for the claimant and medically necessary, the medical provider shall seek prior authorization prior to prescribing or dispensing.

(b) The medical provider may request a prior authorization from the insurance carrier or self-insured employer under which the employee is covered verbally or in writing. The carrier or self-insured employer shall approve or deny this request within four calendar days. A request for prior authorization that is not timely denied shall be deemed approved.

(c) If the carrier or self-insured employer denies the request, the medical provider may seek review by the Board through the medical director’s office or, when requested, through the conciliation process.

(d) Prior authorization must be sought and obtained prior to the time that the drug is dispensed. The carrier or self-insured employer may deny payment when prior authorization was not obtained prior to dispensing the drug.

(e) Exceptions to Prior Authorization Requirement:

(1) Special Fill drugs. The New York Pharmacy Formulary identifies drugs that are subject to the Special Fill policy. Under this policy, a drug that usually requires prior authorization because it is non-preferred may be dispensed when: (i) The drug is prescribed during the perioperative period, which is defined as the period from four days prior to surgery to four days after surgery, with the day of surgery as “day zero”; and (ii) The prescription is medically necessary in the opinion of the treating medical provider; and (iii) The prescription for the Special Fill-eligible drug is for an FDA-approved drug.

(2) Perioperative Fill drugs. The New York Pharmacy Formulary identifies drugs that are subject to the Perioperative Fill policy. Under this policy, the drug identified as a Perioperative Fill drug may be dispensed when: (i) The drug is prescribed during the perioperative period, which is defined as the period from four days prior to surgery to four days after surgery, with the day of surgery as “day zero”; and (ii) The prescription is medically necessary in the opinion of the treating medical provider; and (iii) The prescription for the Perioperative Fill-eligible drug is for an FDA-approved drug.

§ 441.5 Changes to the New York Pharmacy Formulary.

(a) The New York Pharmacy Formulary shall be updated not less than annually to account for changes to medications available on the market.

(b) The Medical Director, or his or her designee, shall review any drugs recommended for addition or removal from the preferred drugs list, and assess public petitions regarding drugs included and/or excluded from the Pharmacy Formulary. If the position of medical director of the Board shall become vacant, the Chair shall appoint a competent person to temporarily assume the authority and duties of the Medical Director to review and make recommendations for additions or removals. However, if the Medical Director is unable to perform his or her duties due to illness or disability, the Chair may temporarily appoint another medical professional to perform these functions. The Chair is authorized to make emergency changes to the Pharmacy Formulary. If the position of medical director of the Board is filled. Written documentation of the review and assessment of changes to the Pharmacy Formulary shall be maintained by the Board and posted on the Board’s website.

Text of proposed rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers’ Compensation Board, Office of General Counsel, 328 State Street, Schenectady, NY 12305-2318, (518) 486-9564, email: regulations@wcb.ny.gov

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Rule Making Activities

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

Public comment will be received until: 60 days after publication of this notice.

Additional matter required by statute: The drug formulary is posted for review at: wcb.ny.gov/drug-formulary-regulation

Regulatory Impact Statement

1. Statutory authority: Workers’ Compensation Law (WCL) § 117 authorizes the Chair of the Workers’ Compensation Board (Board) to adopt reasonable rules consistent with the provisions of the WCL. Chapter 59 of the Laws of 2017 added Section 13-p to the WCL mandating that the Chair adopt a prescription drug formulary.

2. Legislative objectives: These proposed regulations incorporate by reference a prescription drug formulary that includes high-quality and cost-effective drugs. Additionally, these proposed regulations set forth the process for obtaining prior authorization and administrative review of a preauthorization denial for non-preferred drugs.

3. Needs and benefits: Chapter 59 of the Laws of 2017 added Section 13-p. WCL section 13-p mandates that the Chair of the Workers’ Compensation Board establish a prescription drug formulary on or before December 31, 2017. The legislation specifically states: “The prescription drug formulary shall include a tiered list of high-quality, cost-effective medications that are pre-approved to be prescribed and dispensed, as well as additional non-preferred drugs that can be prescribed with prior approval. Such prescription drug formulary, shall include but not be limited to implementation of a pharmacy reimbursement strategy, administration of a prescription drug rebate program for formulary drugs, a pre-approval program, drug utilization review, and limitation on the prescribing of compounded medications and compounded topical preparations.” Accordingly, the proposed rule incorporates a drug formulary by reference and sets forth the procedure for use of preferred and non-preferred drugs. The prescription drug formulary will benefit carriers, medical providers, pharmacies, and claimants by providing uniform guidelines for prescribing drugs.

4. Costs: The proposal will not impose costs on parties of interest in the workers’ compensation system. The New York Pharmacy Formulary can be downloaded free of cost from the Board’s website. Additionally, it is expected that there will be cost savings for all parties. By having a defined list of preferred drug, which have been selected based on their medical efficacy, many claimants may have lower prescription drug costs and there will be fewer fee disputes necessitating hearings before the Workers’ Compensation Board.

5. Local government mandates: The proposed regulation does not impose any program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district. However, a municipality or governmental agency that is self-insured is required to comply with the same rules required of insurance carriers, including reviewing prior authorization requests and approving or denying the request within four days. Although this review process may impose minor administrative costs on self-insured municipalities and governmental agencies, it is the option of municipalities and governmental agencies to self-insure, and self-insurance guidelines are set by statute. Moreover, it is expected that the proposed regulation will actually reduce costs by reducing fee disputes.

6. Paperwork: The proposal does not impose any new reporting requirements.

7. Duplication: There is no duplication.

8. Alternatives: Based upon the mandate of the Legislature to establish a prescription drug formulary, the Chair is required to promulgate regulations in order to ensure the orderly implementation of the formulary incorporated by reference in the proposed regulation. To fail to promulgate the proposed regulations, which set forth clear criteria for the use of preferred drugs, would violate the statutory mandate and cause confusion for parties that anticipate the adoption of a drug formulary. The Workers’ Compensation Board also had discussions about the content of the regulations with other states, such as California, to gather information about their experience with adopting a drug formulary.

9. Federal standards: There are no applicable Federal Standards.

10. Compliance schedule: The proposed regulation is mandatory. All affected medical providers, carriers, and self-insured employers will have to refer to the New York Pharmacy Formulary incorporated by reference in the proposed regulations.

Regulatory Flexibility Analysis

1. Effect of rule: This proposed rule applies to all medicines prescribed to workers’ compensation claimants. The proposed regulation establishes a drug formulary that provides a list of pre-authorized high-quality and cost-effective drugs, and sets forth the procedure for receiving authorization for drugs that are not listed in the drug formulary. The rule will have no effect on local governments.
2. Compliance requirements:
Under this new rule, all prescriptions in workers’ compensation cases must be made in accordance with the drug formulary and accompanying regulations.

3. Professional services:
The Board believes that no professional services will be needed to comply with this rule. This new rule simply proposes establishment of a drug formulary listing authorized medications.

4. Compliance costs:
This proposal does not involve any new compliance costs. It is anticipated that use of the drug formulary will simplify compliance with the workers’ compensation law.

5. Economic and technological feasibility:
No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

6. Minimizing adverse impact:
The Board does not anticipate any increased costs or adverse impact. The new rule simply establishes a formulary for use in prescribing and dispensing medication to workers’ compensation claimants.

7. Small business and local government participation:
The Chair proposes this regulation pursuant to a legislative mandate. Due to the fact that no impact is anticipated on small businesses or local governments, the Chair has not engaged in consultation.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:
The proposed rule applies to all carriers, employers, self-insured employers, third party administrators and pharmacies in rural areas. This includes all municipalities in rural areas.

2. Reporting, recordkeeping and other compliance requirements:
Medical providers in all areas of the state, including rural areas, will be required to prescribe and dispense drugs in accordance with the New York Pharmacy Formulary, which is incorporated by reference in the proposed regulation. Additionally, carriers and self-insured employers throughout the state, including rural areas, will be required to timely approve or deny prior authorization requests for the use of non-preferred or unlisted drugs within four calendar days.

3. Costs:
This proposal will impose minimal compliance costs on carriers and employers across the state, including rural areas, which will be more than offset by the savings afforded by the Pharmacy Formulary. Particularly, the Board anticipates that all regulated parties will experience cost savings as a result of the formulary incorporated by reference in the proposed regulations, insofar as the formulary sets forth clear guidance as to the preferred status of drugs, which should result in fewer fee disputes.

4. Minimizing adverse impact:
The proposed rule provides drug formulary for use in workers’ compensation cases. There is not expected to be any impact on jobs with use of the drug formulary.

5. Rural area participation:
The Board is statutorily required under Workers’ Compensation Law section 13-p to adopt a prescription drug formulary by December 31, 2017. Given the deadline, the Board has not yet had an opportunity to consult with rural areas about the adoption of this regulation. However, the Board will duly assess all comments received by representatives of rural areas during the public comment period.

Job Impact Statement

1. Nature of Impact
The drug formulary proposed in these rules is not expected to have any impact on jobs in New York State. These guidelines simply create a list of high-quality, cost effective drugs that are pre-authorized for treatment of workers’ compensation claimants.

2. Categories and Numbers Affected
The drug formulary is not expected to have any adverse impact on jobs.

3. Regions of Adverse Impact
The drug formulary does not affect any region specifically.

4. Minimizing Adverse Impact
The proposed rule provides drug formulary for use in workers’ compensation cases. There is not expected to be any impact on jobs with use of the drug formulary.