RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption ("Standards")

I.D. No. AAM-17-17-00005-A
Filing No. 437
Filing Date: 2017-06-26
Effective Date: 2017-07-12

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

Action taken: Addition of Part 273 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 214-b

Subject: Standards for growing, harvesting, packing, and holding of produce for human consumption (''Standards'').

Purpose: To incorporate by reference 21 CFR part 112, containing such Standards.

Text or summary was published in the April 26, 2017 issue of the Register, I.D. No. AAM-17-17-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Stephen D. Stich, Director, Food Safety and Inspection, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-4492, email: Stephen.Stich@agriculture.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Audit and Control

NOTICE OF ADOPTION

New York Achieving A Better Life Experience Savings Account Act (ABLE)

I.D. No. AAC-19-17-00001-A
Filing No. 489
Filing Date: 2017-06-28
Effective Date: 2017-07-12

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

Action taken: Addition of Part 156 to Title 2 NYCRR.

Statutory authority: Mental Hygiene Law, sections 84.05 and 84.09; State Finance Law, section 8(14)

Subject: New York Achieving A Better Life Experience Savings Account Act (ABLE).

Purpose: To implement the New York Achieving A Better Life Experience Savings Account Act (ABLE) as a qualified program under IRC § 529-a.

Text or summary was published in the May 10, 2017 issue of the Register, I.D. No. AAC-19-17-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

Assessment of Public Comment

The Office of the State Comptroller (OSC) received comments from The Resource Center for Accessible Living, Inc. and AIM Independent Living Center (hereinafter the "commenters") during the public comment period for the addition of Part 156 to Title 2 NYCRR. While none of the comments require changes in the proposed regulation, it has been determined that the issues presented are valid and are best addressed during the implementation phase with the third party vendor selected to manage/administer the ABLE program.

The commenters expressed concerns about accessibility to information systems, reporting requirements, specifics relating to administrative fees and qualified expenses and representation on the Advisory Council. In an effort to capture the comments in an easy to read format, they are laid out by subject below.

Accessibility

The Resource Center for Accessible Living, Inc. commented that as a means to accommodate all people with disabilities in utilizing the ABLE Act as implemented in New York, the Comptroller should contract with third parties that will serve customers through accessible information systems. This includes accessible websites, mobile applications, and related electronic venues of public accommodation.

They also recommended that any paper or electronic statements and other communications to account holders also be available in accessible formats. Plain language and graphs could also be an option to explore further as a means to better inform account holders who may have trouble understanding communications about their accounts.

Reporting

Aim Independent Living Center comments that the rule states that there will be required reporting, but specifics are lacking and they express the

hope that the reporting will not be so restrictive that it keeps eligible people from utilizing ABLE accounts.

Administrative Fees & Qualified Expenses

Aim Independent Living Center comments that it would like to see specifics about annual contributions and start-up fees. Additionally, this commenter states that 529A of the Internal Revenue Code outlines what qualifies as a disability-related expense and comments that it would be beneficial to outline a process for determining what constitutes this type of expense, in cases where it may not be clear.

Advisory Council Representation

Aim Independent Living Center believes that having independent-living representatives on the Advisory Council would be beneficial. As cross-disability agencies, independent living centers can speak to the needs of people with all types of disabilities.

Conclusion

The Comptroller is working with a program manager to address communication and marketing of the NY ABLE Program, including the use of plain language in disclosure documents, charts and graphs of administrative fees and expenses, accessibility of information systems, detail regarding qualified expenses and required reporting and record keeping. We believe this level of detail is more appropriately addressed as an implementation issue than as a regulatory matter, as we launch this new program. Regarding the make-up of the Advisory Council, the members of such Council are prescribed by statute as either designees of various state agencies or appointees of the Governor or Legislature. The Comptroller has no authority regarding the representatives chosen to serve on this Council.

Division of Criminal Justice Services

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Division of Criminal Justice Services publishes a new notice of proposed rule making in the NYS *Register.*

Handling of Ignition Interlock Cases Involving Certain Criminal Offenders

I.D. No.	Proposed	Expiration Date
CJS-25-16-00004-RP	June 22, 2016	June 22, 2017

Education Department

EMERGENCY RULE MAKING

Residency Certificates

I.D. No. EDU-16-17-00009-E
Filing No. 436
Filing Date: 2017-06-26
Effective Date: 2017-06-26

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

Action taken: Addition of section 80-5.23 to Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed amendment creates a time-limited Residency Certificate to allow candidates enrolled in the program to be certified while enrolled in the program, thus allowing the school district/BOCES to pay their salary.

This time-limited certificate will be valid for up to three years while the candidate is enrolled in and completes the program, and upon successful completion, up to one year of the candidate's residency experience may be credited towards the teaching experience required for the candidate's professional certificate.

To qualify for the Residency Certificate, a candidate must be enrolled in the Classroom Academy Residency Pilot Program, a pilot of a registered and approved teacher education program and must apply to the Department. In addition, the application must include an assurance from the partnering school district that the teacher candidate resident has an employment commitment for the length of the residency program and that the district has provided a plan for mentoring and instructional support to the residency candidate that is acceptable to the Department.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(4-a), is the July 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the July meeting would be August 2, 2017, the date a Notice of Adoption would be published in the State Register. Emergency action is therefore needed at the June 2017 meeting in order to ensure that teacher candidates enrolled in the Classroom Academy Residency Pilot Program for the 2017-2018 school year can receive a residency certificate to allow to be certified while enrolled in the program, thus allowing the school district/BOCES to pay their salary.

Subject: Residency certificates.

Purpose: To establish requirements for candidates seeking a residency certificate.

Text of emergency rule: Section 80-5.23 of the Regulations of the Commissioner of Education shall be added to read as follows:

§ 80-5.23 Residency certificate.

(a) A student who is enrolled in the Classroom Academy Residency Pilot Program, a pilot of a registered and approved teacher education program, may, upon submission of an application with a recommendation by the partnering institution of higher education and a recommendation by the partnering school district, receive a residency certificate under this section.

(b) This certificate shall only be issued to candidates enrolled in a Classroom Academy Residency Pilot Program, as approved by the Department, and who receive an assurance from the partnering school district that the resident has an employment commitment for the length of the residency program and a plan for providing mentoring and instructional support to the residency candidate that is acceptable to the Department.

(c)(1) The certificate shall be valid for no more than three years from its effective date; provided however, the certificate shall have an earlier expiration date if one of the following conditions occurs: the resident successfully completes the residency program, as determined by the partnering institution of higher education; or the resident exits the program, as determined by the partnering higher education institution.

(2) The certificate shall not be renewable.

(3) For individuals called to active duty in the Armed Forces, the validity period of the residency certificate may be extended for the time of active service and an additional 12 months from the end of such service, provided that the holder is a student in a registered or approved graduate program of teacher education.

(d) Upon successful completion of the residency program, as determined by the partnering higher education institution and partnering school district, up to one year of the residency experience may be credited toward the experience required for the student's professional teaching certificate; provided that such experience meets the requirements set forth in section 80-3.4 of the Commissioner's regulations.

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-16-17-00009-P, Issue of April 19, 2017. The emergency rule will expire September 23, 2017.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Education Law 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies. 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 80-5.23 of the Regulations of the Commissioner is to establish the requirements for a residency Certificate for those students enrolled in a Classroom Academy Residency Pilot Program to apply for a time-limited certificate so that candidates enrolled in the program may be certified and receive payment by the school district/BOCES for their services.

3. NEEDS AND BENEFITS:

Candidates enrolled in the Classroom Academy Residency Pilot Program will be able to participate in a two-year full time internship as a part of the National Education Association Greater Public Schools grant which was awarded to the Cambridge, Hudson Falls, and Washington-Warren-Saratoga-Hamilton-Essex County BOCES consortia in partnership with the teacher preparation program at SUNY Plattsburgh-Queensbury.

A goal of the program is to create sustainability by allowing the candidates enrolled in the program to be paid by the school district/BOCES. To accomplish this, the resident must hold a teaching certificate under Education Law § 3009 or be a substitute teacher under 80-5.4 of the Commissioner's Regulations. The candidates would not qualify for an internship certificate under 80-5.9 because an applicant is required to have completed at least one half of the semester hour requirement for their program. The Department proposes creating a time-limited Residency Certificate to allow candidates enrolled in the program to be certified while enrolled in the program, thus allowing the school district/BOCES to pay their salary.

Proposed Amendments:

While enrolled in the program, student candidates will be eligible to receive a time-limited Residency Certificate that will allow them to teach in the partnering district. This time-limited certificate will be valid for up to three years while the candidate is enrolled in and completes the program, and upon successful completion, up to one year of the candidate's residency experience may be credited towards the teaching experience required for the candidate's professional certificate.

To qualify for the Residency Certificate, a candidate must be enrolled in the Classroom Academy Residency Pilot Program, a pilot of a registered and approved teacher education program and must apply to the Department. In addition, the application must include an assurance from the partnering school district that the teacher candidate resident has an employment commitment for the length of the residency program and that the district has provided a plan for mentoring and instructional support to the residency candidate that is acceptable to the Department.

4. COSTS:

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

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

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment does not impose any additional paperwork requirements; application for the certificate is completed electronically.

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 come before the Board of Regents for permanent adoption at its July 2017 meeting. If adopted at the July 2017 meeting, the proposed amendments will become effective on August 2, 2017.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed addition of new section 80-5.23 to the Regulations of the Commissioner is to establish a Residency Certificate for those students enrolled in a Classroom Academy Residency Pilot Program to allow for a time-limited certificate so that candidates enrolled in the program may be certified while in the program and paid by the school district/BOCES.

Candidates enrolled in the Classroom Academy Residency Pilot Program will be able to participate in a two-year full time internship as a part of the National Education Association Greater Public Schools grant which was awarded to the Cambridge, Hudson Falls, and the Washington-Warren-Saratoga-Hamilton-Essex County BOCES consortia in partnership with the teacher preparation program at SUNY Plattsburgh-Queensbury.

A goal of the program is to create sustainability by allowing the candidates enrolled in the program to be paid by the school district/BOCES. To accomplish this, the resident must hold a teaching certificate under Education Law § 3009 or be a substitute teacher under 80-5.4 of the Commissioner's Regulations. The candidates would not qualify for an internship certificate under 80-5.9 of the Regulations because an applicant is required to have completed at least one half of the semester hour requirement for their program. The Department proposes creating a time-limited Residency Certificate to allow candidates enrolled in the program to be certified while enrolled in the program, thus allowing the school district/BOCES to pay their salary.

The amendment does not impose any new recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the proposed amendments that they do not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The proposed amendment will effect school districts and boards of cooperative educational services throughout the State who employ candidates enrolled in the Classroom Academy Residency Pilot Program.

2. COMPLIANCE REQUIREMENTS:

Candidates enrolled in the Classroom Academy Residency Pilot Program will be able to participate in a two-year full time internship as a part of the National Education Association Greater Public Schools grant which was awarded to the Cambridge, Hudson Falls, and Washington-Warren-Saratoga-Hamilton-Essex County BOCES consortia in partnership with the teacher preparation program at SUNY Plattsburgh-Queensbury.

A goal of the program is to create sustainability by allowing the candidates enrolled in the program to be paid by the school district/BOCES. To accomplish this, the resident must hold a teaching certificate under Education Law § 3009 or be a substitute teacher under 80-5.4 of the Commissioner's Regulations. The candidates would not qualify for an internship certificate under 80-5.9 because an applicant is required to have completed at least one half of the semester hour requirement for their program. The Department proposes creating a time-limited Residency Certificate to allow candidates enrolled in the program to be certified while enrolled in the program, thus allowing the school district/BOCES to pay their salary.

Proposed Amendments:

While enrolled in the program, student candidates will be eligible to receive a time-limited Residency Certificate that will allow them to teach in the partnering district. This time-limited certificate will be valid for up to three years while the candidate is enrolled in and completes the program, and upon successful completion, up to one year of the candidate's residency experience may be credited towards the teaching experience required for the candidate's professional certificate.

To qualify for the Residency Certificate, a candidate must be enrolled in the Classroom Academy Residency Pilot Program, a pilot of a registered and approved teacher education program and must apply to the Department. In addition, the application must include an assurance from the partnering school district that the teacher candidate resident has an employment commitment for the length of the residency program and that the district has provided a plan for mentoring and instructional support to the residency candidate that is acceptable to the Department.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

There are no additional compliance costs on local governments, and there is no fee to those applying for the Residency Certificate.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment seeks to allow candidates enrolled in the Classroom Academy Residency Pilot Program to apply for a time-limited certificate and thus may be paid by a school district/BOCES, allowing the sustainability aspect of the program to be implemented. No adverse impact is created by this time-limited certificate.

7. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

This amendment applies to those candidates enrolled in the Classroom Academy Residency Pilot Program, through a grant received by the rural school district consortia composed of Cambridge, Hudson Falls, and the Washington-Warren-Saratoga-Hamilton-Essex County BOCES, in partnership with the teacher preparation program at SUNY Plattsburgh-Queensbury.

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

Candidates enrolled in the Classroom Academy Residency Pilot Program will be able to participate in a two-year full time internship as a part of the National Education Association Greater Public Schools grant which was awarded to the Cambridge, Hudson Falls, and Washington-Warren-Saratoga-Hamilton-Essex County BOCES consortia in partnership with the teacher preparation program at SUNY Plattsburgh-Queensbury.

A goal of the program is to create sustainability by allowing the candidates enrolled in the program to be paid by the school district/BOCES. To accomplish this, the resident must hold a teaching certificate under Education Law § 3009 or be a substitute teacher under 80-5.4 of the Commissioner's Regulations. The candidates would not qualify for an internship certificate under 80-5.9 because an applicant is required to have completed at least one half of the semester hour requirement for their program. The Department proposes creating a time-limited Residency Certificate to allow candidates enrolled in the program to be certified while enrolled in the program, thus allowing the school district/BOCES to pay their salary.

Proposed Amendments:

While enrolled in the program, student candidates will be eligible to receive a time-limited Residency Certificate that will allow them to teach in the partnering district. This time-limited certificate will be valid for up to three years while the candidate is enrolled in and completes the program, and upon successful completion, up to one year of the candidate's residency experience may be credited towards the teaching experience required for the candidate's professional certificate.

To qualify for the Residency Certificate, a candidate must be enrolled in the Classroom Academy Residency Pilot Program, a pilot of a registered and approved teacher education program and must apply to the Department. In addition, the application must include an assurance from the partnering school district that the teacher candidate resident has an employment commitment for the length of the residency program and that the district has provided a plan for mentoring and instructional support to the residency candidate that is acceptable to the Department.

3. COSTS:

The proposed amendment does not impose any costs on candidates. There is no application fee for those candidates applying for the Residency Certificate.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment seeks to allow candidates enrolled in the Classroom Academy Residency Pilot Program to apply for a time-limited certificate and thus may be paid by a school district/BOCES, allowing the sustainability aspect of the program to be implemented. No adverse impact is created by this time-limited certificate.

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 addition of new section 80-5.23 of the Regulations of the Commissioner is to establish a residency certificate for those students enrolled in a Classroom Academy Residency Pilot Program to allow for a time-limited certificate so that candidates enrolled in the program may be certified while in the program and paid by the school district/BOCES.

The proposed amendment seeks to allow candidates the opportunity to participate in a full time two-year internship experience in a district and be paid by the district/BOCES. 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.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Conditional Initial Certificates for Classroom Teachers

I.D. No. EDU-28-17-00012-EP
Filing No. 487
Filing Date: 2017-06-28
Effective Date: 2017-06-28

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

Proposed Action: Amendment of section 80-5.17 of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed amendment permanently extends the option for out-of-state candidates to be eligible for the conditional initial certificate so that these candidates, who have met all other requirements for an initial certificate other than completion of the edTPA, can obtain a certificate and be employed in New York State schools. They can then take the edTPA and obtain an initial certificate upon successful completion of this performance assessment.

The deadline for applying for the initial certificate and being eligible for the conditional initial certificate was May 1, 2017, and the Department is proposing an emergency amendment to remove this deadline.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(4-a), is the September 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the July meeting would be September 28, 2017, the date a Notice of Adoption would be published in the State Register. Emergency action is therefore needed at the June 2017 meeting in order to ensure that out-of-state candidates pursuing certification and employment in the 2017-2018 school year will be able to use the conditional initial certificate option.

Subject: Conditional initial certificates for classroom teachers.

Purpose: Allow out-of-state teachers obtain a conditional certificate while completing their edTPA requirements during their 1st year of employ in NY.

Text of emergency/proposed rule: Subdivision (a) of section 80-5.17 of the Regulations of the Commissioner of education, shall be amended, to read as follows:

(a) Conditional initial certificate in the classroom teaching service.

For out-of-state candidates applying for initial certification *(in a certificate title in the classroom teaching service for which this Part requires completion of a teacher performance assessment)* [on or before May 1, 2017], the commissioner may issue to a candidate who has received a satisfactory passing score on all other required examination requirements, as required for the title and type of certificate sought in this State, a one-year nonrenewable conditional initial certificate, notwithstanding that the candidate has not received a satisfactory passing score on the teacher performance assessment, and deem that all other requirements for the initial certificate in the certificate title sought have been met, provided that the candidate holds a valid regular teacher's certificate or an authorization to practice that the commissioner deems equivalent in the same or an equivalent title by another state or territory of the United States and otherwise meets the requirements for endorsement as set forth in section 80-5.8(a) of this Title, except the teacher performance assessment, if required, and the candidate has not already taken and received an unsatisfactory score on the teacher performance assessment.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 25, 2017.

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 148, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, New York State Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 408-1189, email: privers@nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Education Law 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies. 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 3004(1) authorizes the Commissioner to promulgate regulations governing the certification requirements for teachers employed in public schools.

Education Law 3006(1) authorizes the Commissioner to issue lifetime certificates and such other certificates as the Regents rules prescribe.

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 emergency amendment to section 80-5.17 of the Regulations of the Commissioner is to permanently extend the option for out-of-state candidates, who have met all other requirements for an initial certificate other than completion of the edTPA, to obtain a certificate and be employed in New York State schools.

3. NEEDS AND BENEFITS:

A conditional initial certificate in the classroom teaching service has been available for out-of-state candidates who meet all the requirements for an initial certificate in the classroom teaching service except for successful completion of the edTPA. Such certificate is valid for one year, during which time the candidate must complete the edTPA requirement. Upon successful completion of the edTPA, the candidate then receives his/her initial certificate in the classroom teaching service.

The Department created the conditional initial certificate for those individuals who hold a teaching certificate in another state but do not meet the three-year experience requirement to qualify for endorsement of their certificate. This provision was adopted on a temporary basis, which has expired, but the Department has found that it is essential for those individuals who want to come to New York but do not have access to a classroom, and therefore find difficulty in completing the edTPA.

Proposed Amendment:

The proposed amendment to section 80-5.17 of the Regulations of the Commissioner will permanently extend the option for out-of-state candidates to be eligible for the conditional initial certificate so that these candidates, who have met all other requirements for an initial certificate other than completion of the edTPA, can obtain a certificate and be employed in New York State schools. They can then take the edTPA and obtain an initial certificate upon successfully passing the performance assessment.

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 come before the Board of Regents for permanent adoption at its September meeting. If adopted at the September 2017 meeting, the proposed amendments will become effective as a permanent rule on September 28, 2017.

Regulatory Flexibility Analysis

The purpose of the proposed emergency amendment to section 80-5.17 of the Regulations of the Commissioner is to permanently extend the option for out-of-state candidates to be eligible for the conditional initial certificate so that these candidates, who have met all other requirements for an initial certificate other than completion of the edTPA, can obtain a certificate and be employed in New York State schools.

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.

Rural Area Flexibility Analysis

The purpose of the proposed emergency amendment to section 80-5.17 of the Regulations of the Commissioner is to permanently extend the option for out-of-state teaching candidates to be eligible for the conditional initial certificate so that these candidates, who have met all other requirements for an initial certificate other than completion of the edTPA, can obtain a certificate and be employed in New York State schools.

The amendment does not impose any new recordkeeping or other compliance requirements, and will not have an adverse economic impact, on rural areas in this State. On the contrary, it may enable more certified teachers to be employed in the rural areas of this State. Because it is evident from the nature of the proposed amendment that it does not affect rural areas in this State, no further steps were needed to ascertain that fact and one were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The purpose of the proposed emergency amendment to section 80-5.17 of the Regulations of the Commissioner is to permanently extend the option for out-of-state candidates to be eligible for the conditional initial certificate so that these candidates, who have met all other requirements for an initial certificate other than completion of the edTPA, can obtain a certificate and be employed in New York State schools.

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.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Higher Education Opportunity Programs

I.D. No. EDU-28-17-00013-EP

Filing No. 488

Filing Date: 2017-06-28

Effective Date: 2017-07-01

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

Proposed Action: Amendment of Subpart 152-1 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), 6451(1)(6), 6452(1)(5); and L. 2016, ch. 494

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to allow institutions receiving funding through the Higher Education Opportunity Program (HEOP) grant to use such funds for the new expense categories enumerated in Chapter 494 of the Laws of 2016, which becomes effective on July 1, 2017. The new law amends Education § 6451 to expand the categories of expenses that colleges and universities may be eligible for under the HEOP program to include: student travel for academic activities or conferences; expenses related to helping students apply for and prepare for graduate or professional school; the hiring of students participating in an Arthur O. Eve opportunity for higher education work-study program. In addition, the Department has made technical amendments and updates to the regulatory language to conform with current practice.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the September 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the September meeting, would be September 27,

2017, the date a Notice of Adoption would be published in the State Register. Therefore, emergency action is necessary to timely implement Chapter 494 of the Laws of 2016 by its stated effective date and to ensure that the clarifying amendments made to the regulation are effective before the 2017-2018 academic year commences.

Subject: Higher Education Opportunity Programs.

Purpose: To implement chapter 494 of the Laws of 2016 and make technical clarifying amendments.

Text of emergency/proposed rule: Section 152-1 of the Regulations of the Commissioner of Education shall be amended to read as follows:

§ 152-1.1 Applications.

(a) Applications for aid under the provisions of section 6451 of the Education Law shall be submitted for [the ensuing academic year on forms provided for such purpose by the State Education Department not later than the 15th day of February preceding the commencement of such year, except in appropriate circumstances the Commissioner of Education, or the person designated by him to perform such function, may permit later submission] *each funding cycle in a format and timeframe prescribed by the Commissioner.*

(b) Each application should include a summer program that occurs on or after July 1 to prepare the student for the academic year.

(c) For the purposes of this section a summer session shall be deemed to occur [at the beginning of the college year] *on or after July 1 to prepare the student for the academic year*.

152-1.2 Institutional plan and proposal.

An institution [submitting an application for funds] *applying for* funds shall include in such application information required by section 6451 as well as such information as the Commissioner of Education, or [the person designated by him, may require, including:] *his/her designee may require, including, but not limited to:*

(a) [A] *a* statement of immediate and long range *educational* objectives*, including an explanation of the recruitment and retention efforts for eligible students as defined in section 27-1.1 of this Title*.

(b) [A] *a* description of program contents including [programs of] *mandatory* counseling and *academic and career* advisement, tutoring, remedial[,] *and/or* developmental[, compensatory] courses and other supportive services *which must be offered by the institution as part of the program*.

(c) [Procedures] *procedures* for the evaluation of program effectiveness*, including recruitment efforts, access to the higher education institution, retention of students, and graduation rates*.

(d) [The] *a description of the* nature and extent of coordination with other [nonpublic and public] institutions in New York State that offer *precollegiate or collegiate opportunity programs sponsored by the State (e.g., Liberty Partnership program, Science & Technology entry program, College Discovery Program, Search for Education, Elevation and Knowledge, Educational Opportunity Program) to improve access to higher education through recruitment, admission, and transfer of eligible students*.

(e) [The] *the* criteria for student eligibility for [inclusion] *recruitment and admission* in the institution's educational opportunity [programs] *program must be clearly outlined*. The criteria established by each institution shall limit access to the program *only* to students:

(i) whose prior academic achievement indicates a need for counseling and educational support [in order] to complete their degree programs*; and*

(ii) who are educationally disadvantaged as defined in section 27-1.1 of this Title and would otherwise not be eligible for admission under the college's admission standards, except the institution has made a determination that the student has demonstrated the potential for successful completion of a college-level program.

152-1.3 Date of submission.

(a) [In 1971 and thereafter, the] *The* institutional plan and proposal for funds under the provisions of section 6451 shall be transmitted to the Commissioner of Education or [to the person designated by him] *his/her designee*, [on or before the 15th day of February] *by the date specified in the announcement of funding*.

(b) The date of submission may be modified by the Commissioner of Education or [the person designated by him] *his/her designee*.

152-1.4 [Final report] *Reporting*.

Each institution which has entered into a contract pursuant to section 6451 shall submit to the Commissioner of Education, or [to the person designated by him the] *his/her designee*, [a report] *reports in a form and manner prescribed by the Commissioner of Education or his/her designee*, including but not limited to:

(a) [An] *an* analysis of program operation in terms of the stated objectives and the extent to which the objectives were achieved.

(b) [An] *an* analysis of the progress of students served by the program with a comparison to other students enrolled by the institution.

(c) [An] *an* itemization of the institution's support of such program during the contract period including the use of outside (Federal, State and local) funds.

(d) [Plans] *plans* for program change, expansion and development.

(e) [The] *the* extent and nature of faculty, staff, student and community involvement and participation in program [planning and] *development and implementation to improve retention and graduation rates*.

§ 152-1.5 *Financial Assistance.*

Pursuant to 6451 of the Education Law, moneys made available to institutions through contracts shall be spent for the following purposes:

(a) special testing, counseling and guidance services in the course of screening potential enrollees;

(b) remedial courses, developmental or compensatory courses and summer classes for such students;

(c) special tutoring, counseling and guidance services for such enrolled students;

(d) any necessary supplemental financial assistance as described section 152-1.6 of this Subpart;

(e) partial reimbursement for tuition for regular academic courses pursuant to criteria promulgated by the commissioner;

(f) student travel for academic activities and conferences related to the student's course of study.

(g) expenses related to helping students apply for and prepare for graduate or professional school; including preparation materials, guides, classes, fees for exams for graduate and professional schools and for professional licensure, and travel to and from test centers.

(h) the hiring of enrolled students participating in an Arthur O. Eve opportunity for higher education work-study program for HEOP students comprised of peer tutoring, peer counseling, peer mentoring and activities related to HEOP and/or the administration of HEOP at the institution.

§ 152-1.6 Supplemental financial assistance.

An institution may apply for and award supplemental financial assistance to students enrolled in higher education opportunity programs under the provisions of section 6451 of the Education Law. Such funds shall be limited to:

(a) [Room] *room* and board or a portion thereof *for on-campus resident students and off-campus resident students. For purposes of this section,*

(1) resident student shall mean a student who does not live at home (with parents or guardians) during the academic year;

(2) on-campus resident student shall mean a student who lives in housing facilities owned and/or maintained by the institution; and

(3) off-campus resident student shall mean a student who does not live in institutionally-provided housing.

(b) Travel to and from the student's home, for both residential and commuter students *including study abroad as deemed necessary by the academic course of study. For purposes of this subdivision, a commuter student shall mean a student who is not a resident student (e.g., a student living at home with his or her parents or guardians while attending college).*

(c) Textbooks and instructional materials *as deemed necessary by the program of study*.

(d) [Lunches] *Meals* for commuter students.

(e) Personal expenses, with a limitation of [$250] *$1,000 per year*.

(f) Medical*, vision and dental* insurance.

[§ 152-1.6] *§ 152-1.7* Student eligibility.

A student who is a resident of the State of New York shall be eligible to receive benefits pursuant to the provisions of section 6451 of the Education Law, provided that such student meets the following criteria:

(a) The student is educationally and economically disadvantaged, as defined by the provisions of section 27-1.1 of [the rules of the Board of Regents] *this Title; and*

(b) The student [is a graduate of] *has received* an approved high school *diploma*, or has obtained a New York State high school equivalency diploma (general equivalency diploma) or its equivalent. [The equivalent of the general equivalency diploma is defined as being one of the following:

(1) an armed forces equivalency diploma with a minimum score of 35 on each test section and a minimum composite score of 225; or

(2) a level of knowledge and academic ability equal to the level required by the education opportunity program at the institution to which such student seeks admission.]

(1) An approved high school diploma means:

(a) a New York State high school diploma received pursuant to section 100.5 of this Title; or

(b) a recognized high school diploma issued by another state in the United States.

(2) An approved state high school equivalency diploma is a diploma received pursuant to section 100.7 of this Title.

(c) The student has filed [an application for a basic educational opportunity grant with the appropriate agency of the Federal government] *a Free Application for Federal Student Aid (FAFSA) with the United States*

Department of Education or its successor for the academic year in which benefits pursuant to section 6451 of the Education Law are sought [, provided that such student is eligible to receive such grant]. Each institution which has entered into a contract pursuant to section 6451 of the Education Law shall maintain on file a [photocopy] *record* of [such] *each* student's completed grant *and FAFSA* application*s and other documents establishing the student's economic eligibility status for the program* [or the student eligibility report or a photocopy thereof], by no later than [45] *30* days from the commencement of the academic term.

[§ 152-1.7] *§ 152-1.8* Supervision of funds.

Payments of funds may be suspended or terminated by the Commissioner of Education *or his/her designee* if an institution fails to comply with the provisions of section 6451 of the Education Law or any other applicable law, rule, regulation, or *fails to comply* with the provisions of a contract entered into pursuant to the provisions of such section.

[§ 152-1.8] *§ 152-1.9* Tuition assistance.

An institution may apply for and award tuition assistance for students enrolled in higher education opportunity programs under the provisions of section 6451 of the Education Law. [Such funds shall be limited to the costs of developmental, remedial, and compensatory courses; and to reimburse the institutions] *Institutions shall not be reimbursed* for more than 50 percent of the tuition charged for the [regular] academic program *related to the student's program of study*.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 25, 2017.

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

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, Room 977 EBA, 89 Washington Avenue, Albany, NY 12234, (518) 486-3633, email: REGCOMMENTS@NYSED.GOV

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Education Law 210(not subdivided) authorizes the Regents to register domestic and foreign institutions in terms of New York standards and to fix the value of degrees, diplomas, and certificates issued by institutions of other states and countries.

Education Law 215(not subdivided) authorizes the Regents or the Commissioner to visit, examine, and inspect any institution, require reports, and request information.

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 6451 establishes the requirements for non-public institutions of higher education participating in the Arthur O. Eve opportunity for higher education grant.

Education Law 6452 establishes the requirements for the State and City Universities of New York higher education grant participating in the Arthur O. Eve opportunity for higher education grant.

Chapter 494 of the Laws of 2016 expands the types of expense categories that colleges and universities participating in the Arthur O. Eve Higher Education Opportunity Program (HEOP) grant may receive.

2. LEGISLATIVE OBJECTIVES:

The purpose of the proposed emergency amendments to Subpart 152-1 of the Regulations of the Commissioner of Education to implement Chapter 494 of the Laws of 2016 by clarifying for institutions what types of expenses fall within the newly enumerated categories eligible for the Arthur O. Eve Higher Education Opportunity Program (HEOP) grant funding. In addition, the Department has made technical amendments to conform to current practice and to update current regulatory language. The purpose of the proposed emergency amendments to Subpart 152-1 of the Regulations of the Commissioner of Education is to implement Chapter 494 of the Laws of 2016 by clarifying for institutions what types of expenses fall within the newly enumerated categories eligible for the Arthur O. Eve Higher Education Opportunity Program (HEOP) grant funding.

3. NEEDS AND BENEFITS:

The Arthur O. Eve Higher Education Opportunity Program (HEOP) grant provides a broad range of services to New York State residents who, because of academic and economic circumstances, do not have access to institutions of higher education. HEOP funding includes services such as structured support services, summer programs, counseling, tutoring, remedial/developmental coursework, and financial assistance.

In November 2016, Chapter 494 of the Laws of 2016 was signed into law by the Governor. This bill expands the types of expense categories that colleges and universities participating in HEOP may spend program funds on to include:

- student travel for academic activities or conferences;
- expenses related to helping students apply for and prepare for graduate or professional school; and
- the hiring of students participating in an Arthur O. Eve opportunity for higher education work-study program.

This statute becomes effective on July 1, 2017.

Proposed Amendment:

The proposed amendment implements Chapter 494 of the Laws of 2016 by clarifying for institutions what types of expenses fall within the newly enumerated categories eligible for HEOP funding. In addition, the Department has made technical amendments and updates to the regulatory language to conform with current practice.

Summary of Proposed Amendments to the Regulations:

Section 152-1.1 (Applications):

- Amendments to this section update the language used to describe applications for funding and make it clear that summer programs must begin after July 1 of each year.

Section 152-1.2 (Institutional plan and proposal):

- The amendments to this section clarify for institutions what must be included in their institutional plans and proposals, emphasizing that the program is one with a goal of increasing access to higher education.

Section 152-1.3 (Date of submission):

- The amendments to this section update the language and clarify that, for future application cycles, institutional plans and proposals must be submitted by the date specified in the announcement of funding.

Section 152-1.4 (Final report):

- Amendments to this section update the language and change the title from "Final report" to "Reporting" to clarify that there are interim and final reports as well as a status report for institutions on probation.

Section 152-1.5 (Financial assistance):

- Amendments to this section clarify what moneys made available to institutions through contracts under Education Law § 6451 may be used for and implement Chapter 494 of the Laws of 2016 by clarifying that HEOP funds can be used for student travel for academic activities and conferences related to the students' course of study, preparation materials, guides, classes and fees for graduate and professional exams, travel to and from the test centers, and work-study programs for HEOP students.

Section 152-1.6 (Supplemental financial assistance):

- Amendments to Section 152-1.5 clarify what supplemental financial assistance funds may be used for and provide definitions of "resident" students and "commuter" students for room and board expense purposes. Other amendments in this section make it clear that funds can be used for purposes such as study abroad, textbooks and instructional materials needed in the course of study, meals for commuter students, and an increase in personal expenses from $250 to $1,000.

Section 152-1.7 (Student eligibility):

- The amendments to this section clarify the definitions for an approved high school diploma and general equivalency diploma to be consistent with sections 100.5 and 100.7 of the Commissioner's Regulations.

Section 152-1.8 (Supervision of funds):

- Technical amendments were made to clarify language.

Section 152-1.9 (Tuition assistance):

- Amendments to this section were made to clarify that the amount of funds that institutions may be reimbursed for tuition charged must be related to the student's program of study.

4. COSTS:

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

b. Costs to local government: The amendment does not impose any costs on local government, including institutions of higher education.

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, it implements Chapter 494 of the Laws of 2016 which

expands the types of expense categories that colleges and universities participating in HEOP may spend funds and makes technical amendments to update language and conform to current practice.

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

If adopted at the June 2017 Regents meeting, the emergency action will take effect on July 1, 2017. It is anticipated that the proposed amendment will be presented for permanent adoption at the September 2017 Regents meeting and will take effect as a permanent rule on September 28, 2017.

Regulatory Flexibility Analysis

The purpose of the proposed emergency amendments to Subpart 152-1 of the Regulations of the Commissioner of Education to implement Chapter 494 of the Laws of 2016 by clarifying for institutions what types of expenses fall within the newly enumerated categories eligible for the Arthur O. Eve Higher Education Opportunity Program (HEOP) grant funding. In addition, the Department has made technical amendments to conform to current practice and to update current regulatory language.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

This proposed amendment applies to all institutions of higher education in New York State participating in the Arthur O. Eve Higher Education Opportunity Program (HEOP), including those in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The purpose of the proposed emergency amendments to Subpart 152-1 of the Regulations of the Commissioner of Education to implement Chapter 494 of the Laws of 2016 by clarifying for institutions what types of expenses fall within the newly enumerated categories eligible for the Arthur O. Eve Higher Education Opportunity Program (HEOP) grant funding. In addition, the Department has made technical amendments to conform to current practice and to update current regulatory language.

The proposed amendment does not require any reporting, recordkeeping or other professional services to comply.

3. COSTS:

The proposed amendment does not impose any costs beyond those imposed by statute.

4. MINIMIZING ADVERSE IMPACT:

The purpose of the proposed emergency amendments to Subpart 152-1 of the Regulations of the Commissioner of Education to implement Chapter 494 of the Laws of 2016 by clarifying for institutions what types of expenses fall within the newly enumerated categories eligible for the Arthur O. Eve Higher Education Opportunity Program (HEOP) grant funding. In addition, the Department has made technical amendments to conform to current practice and to update current regulatory language. The Department believes that the same standards must apply for all institutions of higher education, including those located in rural areas of this State.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed emergency amendments to Subpart 152-1 of the Regulations of the Commissioner of Education to implement Chapter 494 of the Laws of 2016 by clarifying for institutions what types of expenses fall within the newly enumerated categories eligible for the Arthur O. Eve Higher Education Opportunity Program (HEOP) grant funding. In addition, the Department has made technical amendments to conform to current practice and to update current regulatory language.

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.

NOTICE OF ADOPTION

Eliminate Academic Literacy Skills Test for Teacher Certification, Remove Unnecessary References to Liberal Arts and Science

I.D. No. EDU-13-17-00014-A
Filing No. 485
Filing Date: 2017-06-28
Effective Date: 2017-07-12

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

Action taken: Amendment of Part 80 of Title 8 NYCRR.

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

Subject: Eliminate Academic Literacy Skills Test for teacher certification, remove unnecessary references to liberal arts and science.

Purpose: To implement the recommendations of the edTPA Task Force.

Text or summary was published in the March 29, 2017 issue of the Register, I.D. No. EDU-13-17-00014-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, NY State Education Department, Office of Counsel, 89 Washington Avenue, Room 148, 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

Since publication of Emergency Adoption and Proposed Rule Making in the State Register on March 29, 2017, the State Education Department (SED) received several comments:

1. COMMENT:

One commenter supported removal of the Academic Literacy Skills Test (ALST) asserting that the exam is flawed, unreliable, invalid, and is biased against minority students. The commenter supports assessing literacy and suggested using an assessment like the SAT writing assessment.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

2. COMMENT:

One commenter supported removal of the ALST asserting the exam is flawed, developed without a pilot phase and without a state contract, and because the questions are vague, misleading, and irrelevant.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

3. COMMENT:

One commenter requested information about how removal of the ALST affects those candidates who paid for and took the ALST before the emergency action to remove the requirement for certification.

DEPARTMENT RESPONSE:

A satisfactory passing score on the ALST was required for teacher certification in NY until March 14, 2017 (effective date of the Regulation change). Candidates who sat for the ALST through March 13, 2017 unfortunately are not eligible for a refund. However, anyone who was registered for the exam on or after March 14, 2017 is eligible for a refund.

4. COMMENT:

Commenters supported the removal of the ALST as a requirement for teacher certification because the exam is a barrier to certification and is biased against candidates of color, and because literacy can be assessed in a less biased way.

DEPARTMENT RESPONSE:

No response is necessary as the comment is supportive.

5. COMMENT:

Commenters supported removal of the ALST because they believe it is a poorly constructed test.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

6. COMMENT:

One commenter supported removal of the ALST asserting the test is a redundant test of literacy that is already assessed in teacher preparation programs which require students to take at least two courses on the teaching of literacy; they are required to write academic and professional papers, which develops their writing skills; and they are required in every course to read, analyze, and apply what they have read.

DEPARTMENT RESPONSE:
No response necessary as the comment is supportive.
7. COMMENT:
One commenter supported removal of the ALST because while literacy is important, it is best assessed through program coursework. The ALST is not the best way to assess literacy because it is limited in scope and culturally biased. The commenter suggests using a fair assessment.
DEPARTMENT RESPONSE:
To the extent the comment is supportive, no response is necessary. The Department has proposed to revise the existing EAS exam to include a literacy portion. This revision ensures that candidates pursuing teacher certification will still be required to demonstrate satisfactory literacy skills.
8. COMMENT:
Commenters expressed support for removing the ALST as a requirement for certification and commend those who supported its removal.
DEPARTMENT RESPONSE:
No response is necessary as the comment is supportive.
9. COMMENT:
One commenter states that removal of the ALST for certification was appropriate because the exam is similar to the EAS. The commenter further stated that the Content Specialty Tests required for certification are costly and lengthy, that the edTPA is costly and should be simplified, and that the exams required for teacher certification cost students hundreds and sometimes thousands of dollars and must be addressed.
DEPARTMENT RESPONSE:
To the extent the comment is supportive, no response is necessary. The Department also believes the cost of exams required for one to become a teacher must be addressed. In fact, the cost of the teacher certification examinations was one of the factors that the edTPA task force considered in proposing removal of the ALST for teacher certification.
10. COMMENT:
One commenter offered his personal experience with the ALST. He explained that the content on the ALST is irrelevant to becoming a teacher, does not assess the competence of a future teacher, and that is only assessed whether or not the candidate is a "good test taker." The commenter believes that the only purpose of the exam was to raise money. The commenter suggests that the Board of Regents ensure that the exams needed to become a teacher assess the competence of future teachers.
DEPARTMENT RESPONSE:
No response is necessary as the comment is generally supportive. The Department also believes that the remaining examinations sufficiently asses the minimum knowledge, skills and abilities needed for a teacher to enter the classroom.
11. COMMENT:
One commenter supports removal of the ALST for teacher certification and believes that this will address teacher shortages and get more candidates into and through teacher preparation programs. The commenter believes that the recommendations from the edTPA task force were well thought out.
DEPARTMENT RESPONSE:
No response is necessary as the comment is supportive.
12. COMMENT:
One commenter expressed concern that the removal of the ALST for teacher certification and revising the EAS exam lowers the standard for teachers. The commenter discussed the lowering of standards for education in general, including the Regents exams and New York State ELA and Math tests, as well as lower graduation rates. The commenter believes that continuing to lower the standards for teacher certification is related to the lowering of standards and declining standards for K-12 students.
DEPARTMENT RESPONSE:
The Department does not believe, nor was it intended, that the proposed amendment lowers the standards for teacher certification in New York. The removal of the ALST was proposed after extensive consideration by the edTPA Task Force over several months. To the extent that the commenter is concerned about revisions to the EAS, these revisions have been proposed to assess the literacy skills previously included as part of the ALST. The EAS will be revised to add a component that assesses candidates reading and writing skills, and the revised assessment will go through the entire test development process to ensure validity before it is implemented in the field.
13. COMMENT:
One commenter expressed concern with eliminating the ALST for teacher certification because it is a basic reading and writing test. The commenter believes teachers need more rigorous standards, not lower standards. They are concerned that an education major in college is not as demanding as other disciplines. The commenter pointed out that NY is doing a poor job educating all students, but especially minority and students of poverty, and lowering the standards for teacher certification will contribute to this problem. The commenter does not believe the tests are flawed, but the Board only calls them "flawed" when pass rates are not high enough.
DEPARTMENT RESPONSE:
See response to #12 above.

NOTICE OF ADOPTION

Multiple Measures Process for the EdTPA

I.D. No. EDU-13-17-00016-A
Filing No. 486
Filing Date: 2017-06-28
Effective Date: 2017-07-12

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

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

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

Subject: Multiple Measures Process for the edTPA.

Purpose: To implement recommendations of the edTPA Task Force to Establish a Multiple Measures Process for the edTPA.

Text or summary was published in the March 29, 2017 issue of the Register, I.D. No. EDU-13-17-00016-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, New York State Education Department, 89 Washington Avenue, Room 138, 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
Since publication of Emergency Adoption and Proposed Rule Making in the State Register on March 29, 2017, the State Education Department (SED) received the following comments on the proposed amendment:
1. COMMENT:
One commenter raised multiple concerns related to the edTPA. One concern was the cost of the assessment and how the cost can be an extreme financial burden on students. The second concern raised was that the edTPA takes away from the learning experience during student teaching. The commenter suggests that the Department address the cost of the edTPA and adjust the size of the task so that students completing the edTPA can successfully complete the exam and have a successful semester of student teaching. The commenter acknowledges the purpose of the edTPA is the ensure high quality teachers, but believes there should be alternatives for candidates.
DEPARTMENT RESPONSE:
While the cost of the edTPA has not been eliminated, one of the reasons that the ALST was eliminated as a requirement for teacher certification was to address the total cost of exams required for teacher certification. The cost of the ALST was $118 and it is no longer required for teacher certification.
With respect to the effect the edTPA has on student teaching, the edTPA Task Force recommended that the Department convene a Task Force to review the current regulation and practice related to the length of student teaching. The first meeting of this Task Force will be held in June 2017.
2. COMMENT:
One commenter expressed concerns related to the World Languages edTPA including low pass rates for the exam, use of the multiple measures review process, strategies for maximizing use of the target language, and the desire for greater alignment of teacher work samples with ACTFL/CAEP accreditation requirements. The commenter also expressed desire and willingness to engage with NYSED further to achieve the goal of improving the effectiveness of the edTPA.
DEPARTMENT RESPONSE:
The Department is in the process of establishing an in-depth handbook review process, as recommended by the edTPA Task Force, which will be made available as soon as possible. The purpose of this process is to allow for specific edTPA handbooks to be reviewed if significant concerns are raised by the field and based on the feedback received, which may result in changes to a handbook.
The Department will continue to engage stakeholders throughout the implementation of the edTPA and in the handbook review to ensure that the voices of experts in the field are considered in this process.
3. COMMENT:
One commenter requested that the edTPA be maintained with the

measures that are currently in place because as an educator they have seen significant improvements in teacher preparation as a result of the edTPA and believes that continued use will benefit K12 students.

DEPARTMENT RESPONSE:

The intent behind the regulatory changes related to the edTPA is to address significant concerns raised by the field related to the passing score of the examination. The Department agrees that the edTPA should remain a measure to assess the minimum knowledge, skills, and abilities of teachers entering the profession, but the multiple measures process will allow for those who fall within a small range below the new cut score the opportunity to show that despite a failing edTPA score, they still possess the minimum knowledge, skills and abilities to enter the classroom.

4. COMMENT:

One commenter supported the efforts of the edTPA Task Force and the proposed amendment. The commenter believes the multiple measures appeals process will offer a way for those who fail the edTPA to have a determination made based on more than just the edTPA score.

DEPARTMENT RESPONSE:

No response is necessary as the comment is supportive.

5. COMMENT:

One commenter raised concerns related to the multiple measures review process for the edTPA. One concern is that it is unclear what data (if any) is being used to support the multiple measures process. Another concern is that, if the edTPA passing score is lowered, the commenter believes there may be no reason for a waiver process to pass the edTPA. The commenter thinks that lowering the passing score and seeing how that works without the multiple measures process would be a better alternative.

Commenter also expressed concerned with the logistics of the process and how the multiple measures review process would be valid and reliable because such a process is difficult to standardize and there is great variation in context, judgment and bias. The commenter mentions that the logistics of the process will be challenging as well. Logistical concerns raised included determining the standard deviation, what scores will be used to calculate the standard deviation, and whether the test vendor will supply a mean score to determine the standard deviation.

DEPARTMENT RESPONSE:

The standard setting committee that is charged with reviewing the edTPA passing score will have access to handbook specific pass rates on the edTPA in order to inform their decision. In addition, the committee will be charged with reviewing the passing score. Ultimately, the committee will make a recommendation to the Commissioner as to whether a new passing score should be established for the edTPA. As to the reliability and validity of the multiple measures review process, the process of having a multiple member panel review multiple measures submitted by students to determine whether or not they possess the knowledge, skills, and abilities to enter a classroom will be made as objective as possible by the panel.

The Department does not believe that this process will require additional resources on higher education institutions. Participation on the panel is voluntary.

In response to the logistical concerns raised by the commenter, as previously mentioned, the Department is currently in the process of convening a standard setting committee, which will be charged with reviewing the edTPA passing score. Based on this outcome, the Department will work with the standards setting committee to determine the appropriate score which qualifies a candidate for the multiple measures review process, including the calculation and scores used to determine the standard deviation.

6. COMMENT:

One commenter raised multiple concerns related to the edTPA. The first concern related to how overwhelming the handbook is for candidates to read, noting that it had to be read over 20 times while completing the assessment. Second, the commenter raised the concern that it is nearly impossible to complete the edTPA during a single 7 week placement, and that it is impossible to plan, teach, and assess lessons during the placement outside of work on the edTPA. Last, the fee was raised as a concern as well.

DEPARTMENT RESPONSE:

In response to the commenter's concern regarding the amount of time it takes to complete the edTPA, the edTPA handbook is meant to be used as a reference guide to candidates completing the assessment. In many cases, programs introduce the handbooks to candidates in advance of completing their edTPA, and it is meant to be embedded in the curriculum to help students become familiar with the handbooks. Used as a reference guide, similar to how a textbook is used, it is possible that a candidate may refer to the handbook several times throughout completion of the edTPA.

With respect to the effect the edTPA has on student teaching, the edTPA Task Force recommended that the Department convene a Work Group to review the current regulation and practice related to student teaching. The first meeting of this Task Force will be held in June 2017.

Lastly, at the March Board of Regents meeting, the Board voted to remove the Academic Literacy Skills Test (ALST) as a requirement for certification, and one of the reasons for this was to address the overall cost of certification exams for students in New York. While the cost of the edTPA was not directly addressed, the hope is that the removal of the ALST will help students with the financial burden.

7. COMMENT:

Commenters expressed disagreement with the regulation changes related to setting a new edTPA passing score, eliminating the ALST, and revising the EAS. Commenters point to significantly lowered expectations for students passing the Regents exams, as well as low student scores on the 3-8 New York State ELA and math exams. At least one commenter indicated that he/she is not surprised that candidates have difficulty on the edTPA, ALST, and EAS because they are not prepared by their programs adequately. Commenters recommend that the Board not provide an easy way out for teacher certification candidates by lowering the edTPA passing score, eliminating the ALST, and revising the EAS.

DEPARTMENT RESPONSE:

In response to these concerns related to lowering the passing score on the edTPA, while a standard setting committee will be charged with reviewing the edTPA passing score, their charge is not to lower the score, but to review the existing passing score using available pass/fail data relating to the examination and sample handbooks to determine if a new passing score needs to be established.

Moreover, the intent behind eliminating the ALST was not to lower the bar to enter the teaching profession or provide an easy way out for those seeking certification. The ALST was eliminated based on recommendations from the edTPA Task Force as the result of several months of work and discussions. The issues being addressed by the removal of the exam include the high costs of the certification examinations and the fact that literacy is already assessed through the other certification examinations. In addition, literacy and writing will also be assessed through the revisions that are currently being made to the EAS.

8. COMMENT:

Several commenters supported the amendments to the Regulations related to the edTPA.

DEPARTMENT RESPONSE:

No response is necessary as the comments are in support.

9. COMMENT:

One commenter, while supportive of removing the ALST, believes that literacy and writing skills must still be assessed. The commenter points out that literacy and writing are not assessed through the edTPA, and suggests using an assessment similar to the SAT to assess literacy and writing.

DEPARTMENT RESPONSE:

The Department believes that assessing literacy and writing skills is critical and that such skills are currently assessed through the other certification examinations. In addition, the Department is also making revisions to the EAS exam to ensure that these skills are assessed. The Department is currently progressing through the test development process to complete the revised EAS exam.

10. COMMENT:

Commenters expressed concern with implementation of the edTPA and the negative consequences it has had on student teaching. Commenters explain that the edTPA "takes away from" the student teaching experience and recommends that the edTPA not be required for certification. Other commenters expressed concern that if the edTPA requirement remains in place there will be a teacher shortage in New York.

DEPARTMENT RESPONSE:

With respect to the effect the edTPA has on student teaching, the edTPA Task Force recommended that the Department convene a Work Group to review the current regulation and practice related to student teaching. The first meeting of this Task Force will be held in June 2017.

11. COMMENT:

One commenter is supportive of the modifications related to the edTPA. As a teacher preparation educator, they have experienced situations where a candidate fails the edTPA by one point and although they have the potential to be a great teacher they must still retake the edTPA to gain certification.

DEPARTMENT RESPONSE:

No response is necessary to the extent that the comment is supportive. The regulation changes were made to address the concerns raised by the commenter. Specifically, the edTPA passing score will be reviewed, and the Department will implement a multiple measures process which will allow for those who fall within a small range below the new cut score the opportunity to show that despite a failing edTPA score, they still possess the minimum knowledge, skills and abilities to enter the classroom.

12. COMMENT:

One commenter raised concerns related to all of the certification exams. Related to the edTPA, the commenter suggested that the edTPA be simplified and should not be so costly.

DEPARTMENT RESPONSE:

See Response No. 7. In addition, while the edTPA is not being simplified by the changes, the Department is moving forward with a standard setting committee to review the edTPA passing score and ultimately recommend a new passing score to the Commissioner.

13. COMMENT:

One commenter raised concerns that the edTPA is a high-stakes exam, the $300 cost is too burdensome for candidates, and that there are specific concerns with the World Languages edTPA handbook. The commenter recommends that the Department consider how the edTPA is implemented and whether it is the best performance assessment for New York.

DEPARTMENT RESPONSE:

While the cost of the edTPA has not been eliminated, one of the reasons that the ALST was eliminated as a requirement for teacher certification was to address the total cost of exams required for teacher certification. The cost of the ALST was $118 and it is no longer required for teacher certification. In addition, the Department continues to make available to education programs vouchers that they can distribute to students they believe are good teaching candidates but struggle financially.

With respect to the concern related to the World Languages handbook, the Department is in the process of establishing an in-depth handbook review process, as recommended by the edTPA Task Force, which will be made available as soon as possible. The purpose of this process is to allow for specific edTPA handbooks to be reviewed if significant concerns are raised by the field and based on the feedback received, it may result in changes to a handbook, or ultimately, use of a different performance assessment.

Last, the review of the edTPA passing score and the implementation of the multiple-measures review process is intended to address the implementation concerns raised by the commenter as well as the concern with the high-stakes nature of the exam.

14. COMMENT:

One commenter raised concern about the people who worked hard to pass the "old" NYSTCE exams and the money spent to take those exams. The commenter is concerned that there are individuals who paid to take the old exams and now have to pay to take the new exams because they did not pass all of the old exams.

DEPARTMENT RESPONSE:

Candidates applying for certification on or after May 1, 2014 or candidates who applied for certification on or before April 30, 2014 but did not meet all the requirements for an initial certificate on or before April 30, 2014, will be required to pass the new examinations. Institutions of higher education in New York were made aware of the implementation of the new certification exams beginning in December 2012. Please see Board of Regents Item from December 2012 at: http://www.regents.nysed.gov/common/regents/files/documents/meetings/2012Meetings/December2012/1212hea1.pdf.

15. COMMENT:

One commenter applauded the recommendations of the Task Force. The commenter supports elimination of the ALST. However, the commenter is concerned with the edTPA and raises the concern that the edTPA takes candidates focus away from student teaching.

DEPARTMENT RESPONSE:

No comment is necessary to the extent that the comment supports removal of the ALST. In response to the concern about the edTPA and the effect on student teaching, please see response to Comment # 10 above.

16. COMMENT:

One commenter supports elimination of the ALST, revisions to the EAS, adjustment of the edTPA passing score, and establishment of the multiple measures review process. However, the commenter raises a concern with the proposal to eliminate the current short-answer constructed response items and to replace them with a reading and writing item which will assess both students' ability to teach a diverse population and their literacy skills. The commenter explains that assessing literacy within the EAS is unnecessary and inconsistent with the objectives of the exam. The commenter asks that the Board reconsider revision of the EAS. The commenter explains that the revisions to the EAS were not raised by the edTPA Task Force.

DEPARTMENT RESPONSE:

No response is necessary to the extent that the comment is supportive. In response to the concern regarding the revisions to the EAS to add a literacy component, the Department is in the process of convening test development committees to review the proposal to revise the EAS. These committees, including Framework Review, Item Review, and Bias Review, will be charged with incorporating literacy and writing skills into the current EAS exam in a way that does not compromise the current exam, but still ensures that candidates possess the requisite knowledge, skills, and abilities (including literacy and writing) to enter the profession.

17. COMMENT:

One commenter supports elimination of the ALST because literacy and writing are already assessed in many ways, and the proposal to establish a multiple-measures review process for the edTPA.

DEPARTMENT RESPONSE:

No response is necessary because the comments are supportive.

18. COMMENT:

One commenter supports elimination of the ALST but raises a concern that the edTPA is misplaced. The commenter believes the field of education is under attack, and that the higher standards demanded by CAEP and NYSED are troubling. The commenter believes the edTPA should be put under a microscope and that it would be better placed at the professional level. The commenter suggests allowing institutions the authority to get their students through college earning their degree to teach in schools.

DEPARTMENT RESPONSE:

The edTPA Task Force made the recommendations (elimination of the ALST, review of the edTPA passing score, and implementation of the multiple-measures review process for the edTPA) in response to similar concerns raised by the field regarding the high demands placed on teacher certification candidates and the field. The Task Force worked over several months to come up with recommendations that addressed these concerns while ensuring that new teachers still possess the requisite knowledge, skills, and abilities to enter the profession and ensure that every student has a competent teacher. The recommendation to eliminate the ALST was proposed to address factors such as cost as well as the idea that literacy and writing are assessed throughout a candidate's education program. The review of the edTPA passing score is in progress by the Department, as well as establishment of the multiple-measures review process for the edTPA and the in-depth handbook review process.

19. COMMENT:

One commenter raised the concern that the current EAS exam is not appropriate for trade and technical teachers because given the current course requirements for their initial certification, they will not have the background knowledge to accommodate special needs learners.

DEPARTMENT RESPONSE:

At the May 2017 Board of Regents meeting, the Department proposed a regulation change that eliminates the EAS requirement for Career and Technical Education (CTE) teachers pursuing an Initial certificate and instead proposes to make this a requirement to obtain a Professional CTE certificate. Please see Board of Regents Item at: https://www.regents.nysed.gov/common/regents/files/517hea1.pdf. After expiration of the 45-day public comment period, it is anticipated that the Board will permanently adopt this change at its September 2017 meeting and that it will become an effective rule on September 27, 2017.

20. COMMENT:

One commenter fully supported elimination of the ALST but does not approve of the multiple measures review process for the edTPA and believes those who fail the edTPA should re-take the exam.

DEPARTMENT RESPONSE:

No response is necessary to the extent that the comment is in support of removal of the ALST. In response to the concern regarding the multiple-measures review process for the edTPA, it should be noted that this option will not be available for all candidates who fail the edTPA but only those who fall within one standard deviation below the new passing score once recommended by an edTPA standard setting panel to the Commissioner. Therefore, this will only be available to those candidates who receive scores approximately 1-3 points below the new passing score (depending on what the new passing score is).

21. COMMENT:

Commenters fully supported elimination of the ALST but believe the edTPA is misplaced and instead should be used to determine if teachers can make tenure in their full time teaching positions and/or earning a master's degree and should not be required for certification.

DEPARTMENT RESPONSE:

The examination has been validated for State certification purposes. Moreover, the Department believes that all teachers should have minimum knowledge, skills and abilities in pedagogy, not just tenured teachers or teachers who wish to obtain their master's degree. Teachers could be in the classroom for years before obtaining tenure and/or their master's degree without demonstrating these minimum pedagogical skills. Therefore, the Department believes no changes are needed.

22. COMMENT:

One commenter requests that programs that have attained or are seeking accreditation through ACTFL-CAEP (formerly NCATE) National Recognition be allowed to opt out of edTPA World Languages.

DEPARTMENT RESPONSE: The Department believes that there should be minimum certification standards for teaching candidates in all programs across the State. See also Response to #2.

23. COMMENT:

One commenter expressed concern about the diversity of the edTPA multiple measures because New York is a large and geographically diverse state, and it will be difficult to convene a panel that can adequately reflect the diversity.

DEPARTMENT RESPONSE

The Department will make every effort to ensure that the panel represents the geographic diversity of the State.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Interstate Compact for Educational Opportunity for Military Children and Physical Education Requirements for a Diploma

I.D. No. EDU-28-17-00011-P

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

Proposed Action: Amendment of sections 100.5 and 100.20 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1) and 3308-3318, to implement L. 2014, ch. 328

Subject: Interstate Compact for Educational Opportunity for Military Children and Physical Education Requirements for a Diploma.

Purpose: To implement ch. 328 of the Laws of 2014 and to provide flexibility in the physical education diploma requirements.

Text of proposed rule:

1. Paragraph (4) of subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education is amended, to read as follows:

(4)*(i)* [All] *Except as otherwise provided in subparagraph (ii) of this paragraph, all* students shall have earned the equivalent of two units of credit in physical education in accordance with the requirements set forth in section 135.4(c)(2)(ii) of this Title. Such units of credit shall not count towards the required units of credit set forth in paragraphs (1) and (2) of this subdivision for those students who enter grade nine before the 2001-2002 school year. Beginning with the 2001-2002 school year and thereafter, such units of credit in physical education shall count toward the required total. A student who has completed the diploma requirements as set forth in paragraphs (1) and (2) of this subdivision in fewer than eight semesters, and who is otherwise eligible to receive a diploma, shall not be required to continue enrollment in high school for the sole purpose of completing the physical education requirements as set forth in this paragraph. *Any student who has completed eight semesters in a registered New York State high school or a high school outside the registered New York state high school awarding the credits, and who has accumulated the required units of credit in physical education to meet the diploma requirements, shall not be required to continue enrollment in physical education courses for any additional semesters.*

(ii) Students who enter a registered New York State high school and have completed one or more semesters in a high school outside New York State shall be exempt from the required two units of credit requirement in physical education for a diploma. Instead, such students shall be required to enroll in physical education courses every semester they are in a registered New York State high school, and shall earn 1/4 unit of credit in physical education for each semester completed in a registered New York State high school to meet the diploma requirements.

2. Subparagraphs (iii) and (iv) of paragraph (5) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, to read as follows:

(5) Transfer credit. Transfer credit is awarded for work done outside the registered New York State high school awarding the credit.

(i) . . .

(ii) . . .

(iii) (a) . . .

(b) Students who enter a registered New York State high school for the first time in grade 11 in the 2002-2003 school year and thereafter, *or who reenter a registered New York State high school in grade 11 after having been enrolled in a registered New York State high school for three or fewer semesters,* other than those students who have received home instruction pursuant to section 100.10 of this Part in New York State or who have been enrolled in a registered or non-registered public or nonpublic New York State high school, in order to receive a high school diploma must pass the Regents [Comprehensive Examination] *examination* in English *Language Arts*, a Regents examination in mathematics, a Regents examination in United States history and government, and a Regents examination in science, or approved alternatives. The principal may exempt such student from the requirement for the Regents examination in global history and geography ordinarily taken and passed before the date of the student's entry. Additionally, for such student who first enters grade 11 in a registered New York State high school, *or who reenter a registered New York State high school in grade 11 after having been enrolled in a registered New York State high school for three or fewer semesters,* in the 2018-2019 school year and thereafter, the principal may exempt the student from the two units of credit requirement in global history and geography by substituting two units of credit in social studies.

(iv)

(a) . . .

(b) Students who enter a registered New York State high school for the first time in grade 12 in the 2004-2005 school year and thereafter, *or who reenter a registered New York State high school in grade 12 after having been enrolled in a registered New York State high school for three or fewer semesters,* other than those students who have received home instruction pursuant to section 100.10 of this Part in New York State or who have been enrolled in a registered or non-registered public or nonpublic New York State high school in order to receive a high school diploma must pass the Regents [Comprehensive] [E]*e*xamination in English, a Regents examination in mathematics, and a Regents examination in United States history and government, or approved alternatives. The principal may exempt such student from the requirement for the Regents examination in science and the Regents examination in global history and geography ordinarily taken and passed before the date of the student's entry. Additionally, for such student who first enters grade 12 in a registered New York State high school in the 2019-2020 school year and thereafter, *or who reenter a registered New York State high school in grade 12 after having been enrolled in a registered New York State high school for three or fewer semesters,* the principal may exempt the student from the two units of credit requirement in global history and geography by substituting two other units of credit in social studies.

3. Section 100.20 of the Regulations of the Commissioner of Education shall be added, to read as follows:

§ 100.20 Graduation and Diploma Requirements for Students Covered Under the Interstate Compact on Educational Opportunity for Military Children

(a) Notwithstanding any other provision of law or regulation to the contrary, in order to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents, school districts and charter schools that receive public funding and serve students of active duty military families who are formally enrolled in kindergarten through twelfth grade shall comply with the provisions of Education Law §§ 3300-3307 and this section relating to educational records, enrollment, placement decisions, excused absences, residency determinations and graduation requirements.

(b) For purposes of this section:

(1) Military children shall mean those children for which the "interstate compact on educational opportunity for military children" applies as set forth in Education Law § 3303;

(2) Receiving state shall mean New York State, the State to which a child of a military family is sent, brought, or caused to be sent or brought; and

(3) Sending state shall mean the state from which a child of a military family is sent, brought, or caused to be sent or brought.

(c) Graduation and diploma requirements. Notwithstanding any other provision of law or regulation to the contrary, in accordance with Education Law § 3307(2), a public school district or charter school, shall accept the following to meet the diploma requirements for such students in New York State:

(1) exit or end of course examinations required for graduation in the sending state, where the principal from the school in the sending state attests in writing to the principal of the school in the receiving state that the student has achieved a satisfactory passing score on such exam(s) and that he/she has met the proficiency standards for the course(s) assessed in the sending state; provided that, prior to accepting such exam(s), the principal of the school in the receiving state may request additional information regarding the course(s) and exam(s) from the principal of the school in the sending state;

(2) national norm referenced achievement tests, where the principal from the school in the sending state attests in writing that the student has achieved a score equal to or greater than the national grade equivalent corresponding to the grade in which the corresponding Regents examination required for graduation is typically administered; and

(3) where the principal of the school in the sending state has accepted course credit for a course that would typically culminate in an examination required for graduation in New York State, the principal of the school in the receiving state shall accept any corresponding alternative end of course local examination for such course(s), where the principal from the school in the sending state attests in writing that the student has achieved a score on such exam that meets the proficiency standards for the course assessed in the sending state; provided that, prior to accepting such exam(s), the principal of the school in the receiving state may request additional information regarding the course(s) and exam(s) from the principal of the school in the sending state.

(d) If none of the alternatives in subdivision (c) of this section can be

accommodated by the principal of the school in the receiving state for a student transferring into such school at the beginning of or during grade 12, then the principal of the school in the receiving state shall provide written notice to the principal of the school in the sending state which shall include notice that the school district in the sending state shall ensure that the student receives a diploma from the school district in the sending state if the student meets the graduation requirements of the school district in the sending state. In the event that the sending state is not a member of the interstate military compact, the receiving state shall use best efforts to facilitate on-time graduation of the student using the exams described in subdivision (c) of this section.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, 89 Washington Avenue, Room 142, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Angelica Infante, State Education Department, 89 Washington Avenue, Room 875 EBA, Albany, NY 12234, (518) 408-1189, 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 sets for the responsibilities of the Education Department and the Board of Regents.

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 all general and special laws relating to the educational system of the state and execute all educational policies determined upon by the Board of Regents.

Education Law §§ 3300-3318 of the Education Law, as amended by Chapter 328 of the Laws of 2014 sets forth the requirements for the Interstate Compact for Military Children.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment implements Chapter 328 of the Laws of 2014 entitled the Interstate Compact on Educational Opportunity for Military Children. The purpose of the law is to remove barriers to educational success faced by children of military families because of frequent moves and deployment of their parents.

3. NEEDS AND BENEFITS:

Educational Records, Enrollment and Immunizations

Education Law § 3304, as added by Chapter 328 of the Laws of 2014, provides that if official education records cannot be released to the parents for purposes of transferring to another school, the custodian of the records in the sending state shall prepare and furnish to the parent a set of unofficial records. Upon receipt of the unofficial records by the school in the receiving state, the student must be enrolled and placement decisions must be made in accordance with the information on unofficial records and then later validated. It also requires that states that enter into the interstate compact, including New York State, give families 30 days from the date of enrollment to obtain any immunizations required by the receiving state.

Placement Decisions

Education Law § 3305, as added by Chapter 328 of the Laws of 2014, requires that when a student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered and there is space available as determined by the local educational agency. It also requires the receiving school to initially honor placement of the student in programs based on current educational assessments conducted in the sending school state or participation/placement in like programs in the sending state, including but not limited to gifted and talented programs and English as a second language. It further provides school districts with flexibility to waive course or program prerequisites, or other preconditions for placement in courses or programs offered under the jurisdiction of the school district.

Residency Determinations

Education Law § 3306, as added by Chapter 328 of the Laws of 2014, requires that a properly executed special power of attorney (in New York, a special designation of person in parental relation pursuant to General Obligations Law), shall be considered sufficient for the sole purpose of establishing residency of a transferring student into a public school district and for all other actions in the school district requiring parental participation and consent. A transitioning child placed in the care of such a person may continue to attend the school in New York within which he or she was enrolled while residing with the custodial parent until the child completes the highest grade level in such school.

Graduation Requirements

Education Law § 3307, as added by Chapter 328 of the Laws of 2014, requires local educational agencies (LEA) to waive specific courses required for graduation if similar coursework has been satisfactorily completed in another LEA or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the LEA shall provide an alternative means of acquiring required coursework so that graduation may occur on time. Section 3307(2) of Education Law also requires states to accept (a) exit or end of course exams required for graduation from the sending state; (b) national norm referenced achievement tests; and (c) alternative testing, in lieu of testing requirements for graduation in the receiving state.

Proposed Regulatory Amendments

In accordance with Chapter 328 of the Laws of 2014, the Department recommends creating a new section 100.20 of the Commissioner's Regulations to make it clear that notwithstanding any other provision of law or regulation to the contrary, school districts and charter schools shall comply with the provisions of Education Law §§ 3300-3318 relating to educational records, enrollment, placement decisions, excused absences, residency determinations and graduation requirements for military students covered under the new law.

Moreover, the proposed amendment provides that, a public school district or charter school shall accept the following to meet the diploma requirements for such students in New York State:

(1) exit or end of course examinations required for graduation in the sending state, where the principal from the school in the sending state attests in writing to the principal of the school in the receiving state that the student has achieved a satisfactory passing score on such exam(s) and that he/she has met the proficiency standards for the course(s) assessed in the sending state; provided that, prior to accepting such exam(s), the principal of the school in the receiving state may request additional information regarding the course(s) and exam(s) from the principal of the school in the sending state;

(2) national norm referenced achievement tests, where the principal from the school in the sending state attests in writing that the student has achieved a score equal to or greater than the national grade equivalent corresponding to the grade in which the corresponding Regents examination required for graduation is typically administered; and

(3) where the principal of the school in the sending state has accepted course credit for a course that would typically culminate in an examination required for graduation in New York State, the principal of the school in the receiving state shall accept any corresponding alternative end of course local examination for such course(s), where the principal from the school in the sending state attests in writing that the student has achieved a score on such exam that meets the proficiency standards for the course assessed in the sending state; provided that, prior to accepting such exam(s), the principal of the school in the receiving state may request additional information regarding the course(s) and exam(s) from the principal of the school in the sending state.

If none of the alternatives outlined above can be accommodated by the principal of the school in the receiving state for a student transferring into such school at the beginning of or during grade 12, then the principal of the school in the receiving state shall provide written notice to the principal of the school in the sending state which shall include notice that the school district in the sending state shall ensure that the student receives a diploma from the school district in the sending state if the student meets the graduation requirements of the school district in the sending state. In the event that the sending state is not a member of the interstate military compact, the receiving state shall use best efforts to facilitate on-time graduation of the student using the exams described above.

In addition, the proposed amendment would stipulate that all students, including students of military families, who spent three or fewer semesters in a New York State school prior to returning to a New York school in grade 11 or later, would also be subject to the existing assessment exemptions for Global History and Geography and Science outlined in the current regulation.

Physical Education Requirements

Currently, the diploma requirements require that a student complete 2 units of credit in Physical Education (PE) and that students participate in PE every semester they are enrolled in school, even if they have met the required 2 credits and remain in school beyond their senior year. According to the 2016 Shape the Nation Report published by the Society of Health and Physical Education, 9 states require ½ credit in PE, 19 states require 1 credit, 5 states require 1.5 credits and only 4 states require 2 credits in PE.

Students who transfer to New York high schools part way through high school are finding themselves severely under credited in PE because their sending state did not require instruction in PE every semester. This often results in, at best, course selections being impacted due to the necessity to enroll in 2 or 3 PE courses each semester to catch up, or at worst, students not graduating on time.

Therefore, the Department further proposes a revision to section 100.5(d)(5) of Commissioner's Regulations to allow all students (not just students of military families), who transfer into a registered New York

state high school from another state, to be exempt from the required two units of credit requirement in physical education to meet the diploma requirements. Instead, such students shall be required to enroll in physical education courses every semester they are in a registered New York State high school, and shall earn 1/4 unit of credit for each semester of physical education completed in a registered New York State high school to meet the diploma requirements.

The Department further proposes an amendment to allow students who have earned the required number of credits in physical education to meet the diploma requirements, but may need more than 8 semesters to graduate due to other course or assessment deficiencies, to be permitted to stop enrolling in physical education courses. Often students need to return beyond their senior year to make up a failed course or attend preparatory sessions to pass failed assessments, and the current regulation requires these students to enroll in physical education courses for those semesters as well, even though they have met the required number of diploma credits for graduation. The proposed amendment will eliminate this requirement.

4. COSTS:

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

b. Costs to local government: The amendment does not impose any costs on local government, including institutions of higher education.

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, it implements Chapter 494 of the Laws of 2016 which expands the types of expense categories that colleges and universities participating in HEOP may spend funds and makes technical amendments to update language and conform to current practice.

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 presented for permanent adoption at the September 2017 Regents meeting and will take effect as a permanent rule on September 28, 2017.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed amendment is to implement Chapter 328 of the Laws of 2014 relating to the Interstate Compact for Military Children and to make amendments to the physical education requirements for individuals who transfer to a New York State school from an out of state school.

The proposed amendments do not impose any new recordkeeping or other compliance requirements on small businesses, and will not have an adverse economic impact on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The proposed amendment affects school districts and charter schools.

2. COMPLIANCE REQUIREMENTS:

Educational Records, Enrollment and Immunizations

Education Law § 3304, as added by Chapter 328 of the Laws of 2014, provides that if official education records cannot be released to the parents for purposes of transferring to another school, the custodian of the records in the sending state shall prepare and furnish to the parent a set of unofficial records. Upon receipt of the unofficial records by the school in the receiving state, the student must be enrolled and placement decisions must be made in accordance with the information on unofficial records and then later validated. It also requires that states that enter into the interstate compact, including New York State, give families 30 days from the date of enrollment to obtain any immunizations required by the receiving state.

Placement Decisions

Education Law § 3305, as added by Chapter 328 of the Laws of 2014, requires that when a student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered and there is space available as determined by the local educational agency. It also requires the receiving school to initially honor placement of the student in programs based on current educational assessments conducted in the sending school state or participation/placement in like programs in the sending state, including but not limited to gifted and talented programs and English as a second language. It further provides school districts with flexibility to waive course or program prerequisites, or other preconditions for placement in courses or programs offered under the jurisdiction of the school district.

Residency Determinations

Education Law § 3306, as added by Chapter 328 of the Laws of 2014, requires that a properly executed special power of attorney (in New York, a special designation of person in parental relation pursuant to General Obligations Law), shall be considered sufficient for the sole purpose of establishing residency of a transferring student into a public school district and for all other actions in the school district requiring parental participation and consent. A transitioning child placed in the care of such a person may continue to attend the school in New York within which he or she was enrolled while residing with the custodial parent until the child completes the highest grade level in such school.

Graduation Requirements

Education Law § 3307, as added by Chapter 328 of the Laws of 2014, requires local educational agencies (LEA) to waive specific courses required for graduation if similar coursework has been satisfactorily completed in another LEA or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the LEA shall provide an alternative means of acquiring required coursework so that graduation may occur on time. Section 3307(2) of Education Law also requires states to accept (a) exit or end of course exams required for graduation from the sending state; (b) national norm referenced achievement tests; and (c) alternative testing, in lieu of testing requirements for graduation in the receiving state.

Assessment Requirements

The assessment requirements for a Regents or local diploma call for 1 Regents examination in each discipline (ELA, Math, Science, Social Studies) and 1 Pathway option. The pathway provisions and the existing waiver of certain exams based upon a student's entrance date (students who transfer in grade 11 are exempt from the Global History and Geography Regents examination; students who transfer in grade 12 are exempt from the Global and Science Regents examinations), do provide some flexibility in meeting the requirements. This provision however, does not apply to students who spend as little as 1 day enrolled in a New York State high school prior to grade 11. The exemption provisions currently in place only cover a student who enters a New York high school for the first time in grade 11. Students of military families often transition in and out of the state multiple times in a 4 year period.

In addition, a transfer student may have taken a comparable course in a subject leading to a Regents exam years earlier in their sending school. Upon entry into a New York high school, students often need to schedule review classes or retake courses in order to prepare for an assessment covering instruction they completed earlier in their high school career.

Proposed Regulatory Amendments

In accordance with Chapter 328 of the Laws of 2014, the Department recommends creating a new section 100.20 of the Commissioner's Regulations to make it clear that notwithstanding any other provision of law or regulation to the contrary, school districts and charter schools shall comply with the provisions of Education Law §§ 3300-3318 relating to educational records, enrollment, placement decisions, excused absences, residency determinations and graduation requirements for military students covered under the new law.

Moreover, the proposed amendment provides that, a public school district or charter school shall accept the following to meet the diploma requirements for such students in New York State:

(1) exit or end of course examinations required for graduation in the sending state, where the principal from the school in the sending state attests in writing to the principal of the school in the receiving state that the student has achieved a satisfactory passing score on such exam(s) and that he/she has met the proficiency standards for the course(s) assessed in the sending state; provided that, prior to accepting such exam(s), the principal of the school in the receiving state may request additional information regarding the course(s) and exam(s) from the principal of the school in the sending state;

(2) national norm referenced achievement tests, where the principal from the school in the sending state attests in writing that the student has achieved a score equal to or greater than the national grade equivalent corresponding to the grade in which the corresponding Regents examination required for graduation is typically administered; and

(3) where the principal of the school in the sending state has accepted course credit for a course that would typically culminate in an examina-

tion required for graduation in New York State, the principal of the school in the receiving state shall accept any corresponding alternative end of course local examination for such course(s), where the principal from the school in the sending state attests in writing that the student has achieved a score on such exam that meets the proficiency standards for the course assessed in the sending state; provided that, prior to accepting such exam(s), the principal of the school in the receiving state may request additional information regarding the course(s) and exam(s) from the principal of the school in the sending state.

If none of the alternatives outlined above can be accommodated by the principal of the school in the receiving state for a student transferring into such school at the beginning of or during grade 12, then the principal of the school in the receiving state shall provide written notice to the principal of the school in the sending state which shall include notice that the school district in the sending state shall ensure that the student receives a diploma from the school district in the sending state if the student meets the graduation requirements of the school district in the sending state. In the event that the sending state is not a member of the interstate military compact, the receiving state shall use best efforts to facilitate on-time graduation of the student using the exams described above.

In addition, the proposed amendment would stipulate that all students, including students of military families, who spent three or fewer semesters in a New York State school prior to returning to a New York school in grade 11 or later, would also be subject to the existing assessment exemptions for Global History and Geography and Science outlined in the current regulation.

Physical Education Requirements

Currently, the diploma requirements require that a student complete 2 units of credit in Physical Education (PE) and that students participate in PE every semester they are enrolled in school, even if they have met the required 2 credits and remain in school beyond their senior year. According to the 2016 Shape the Nation Report published by the Society of Health and Physical Education, 9 states require ½ credit in PE, 19 states require 1 credit, 5 states require 1.5 credits and only 4 states require 2 credits in PE.

Students who transfer to New York high schools part way through high school are finding themselves severely under credited in PE because their sending state did not require instruction in PE every semester. This often results in, at best, course selections being impacted due to the necessity to enroll in 2 or 3 PE courses each semester to catch up, or at worst, students not graduating on time.

Therefore, the Department further proposes a revision to section 100.5(d)(5) of Commissioner's Regulations to allow all students (not just students of military families), who transfer into a registered New York state high school from another state, to be exempt from the required two units of credit requirement in physical education to meet the diploma requirements. Instead, such students shall be required to enroll in physical education courses every semester they are in a registered New York State high school, and shall earn 1/4 unit of credit for each semester of physical education completed in a registered New York State high school to meet the diploma requirements.

The Department further proposes an amendment to allow students who have earned the required number of credits in physical education to meet the diploma requirements, but may need more than 8 semesters to graduate due to other course or assessment deficiencies, to be permitted to stop enrolling in physical education courses. Often students need to return beyond their senior year to make up a failed course or attend preparatory sessions to pass failed assessments, and the current regulation requires these students to enroll in physical education courses for those semesters as well, even though they have met the required number of diploma credits for graduation. The proposed amendment will eliminate this requirement.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

There are no additional costs imposed on local governments beyond those imposed by statute.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements Chapter 328 of the Laws of 2014. Therefore, no alternatives were considered with respect to the amendments made to section 100.20 of the Commissioner's regulations. With respect to the amendments made to 100.5 of the Commissioner's regulations, the Department believes the changes to the physical education requirements and to the transfer credits for certain assessments minimizes adverse impact on children transferring to New York from another state.

7. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

This proposed amendment applies to all school districts and charter schools located in the State, including those in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Educational Records, Enrollment and Immunizations

Education Law § 3304, as added by Chapter 328 of the Laws of 2014, provides that if official education records cannot be released to the parents for purposes of transferring to another school, the custodian of the records in the sending state shall prepare and furnish to the parent a set of unofficial records. Upon receipt of the unofficial records by the school in the receiving state, the student must be enrolled and placement decisions must be made in accordance with the information on unofficial records and then later validated. It also requires that states that enter into the interstate compact, including New York State, give families 30 days from the date of enrollment to obtain any immunizations required by the receiving state.

Placement Decisions

Education Law § 3305, as added by Chapter 328 of the Laws of 2014, requires that when a student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered and there is space available as determined by the local educational agency. It also requires the receiving school to initially honor placement of the student in programs based on current educational assessments conducted in the sending school state or participation/placement in like programs in the sending state, including but not limited to gifted and talented programs and English as a second language. It further provides school districts with flexibility to waive course or program prerequisites, or other preconditions for placement in courses or programs offered under the jurisdiction of the school district.

Residency Determinations

Education Law § 3306, as added by Chapter 328 of the Laws of 2014, requires that a properly executed special power of attorney (in New York, a special designation of person in parental relation pursuant to General Obligations Law), shall be considered sufficient for the sole purpose of establishing residency of a transferring student into a public school district and for all other actions in the school district requiring parental participation and consent. A transitioning child placed in the care of such a person may continue to attend the school in New York within which he or she was enrolled while residing with the custodial parent until the child completes the highest grade level in such school.

Graduation Requirements

Education Law § 3307, as added by Chapter 328 of the Laws of 2014, requires local educational agencies (LEA) to waive specific courses required for graduation if similar coursework has been satisfactorily completed in another LEA or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the LEA shall provide an alternative means of acquiring required coursework so that graduation may occur on time. Section 3307(2) of Education Law also requires states to accept (a) exit or end of course exams required for graduation from the sending state; (b) national norm referenced achievement tests; and (c) alternative testing, in lieu of testing requirements for graduation in the receiving state.

Assessment Requirements

The assessment requirements for a Regents or local diploma call for 1 Regents examination in each discipline (ELA, Math, Science, Social Studies) and 1 Pathway option. The pathway provisions and the existing waiver of certain exams based upon a student's entrance date (students who transfer in grade 11 are exempt from the Global History and Geography Regents examination; students who transfer in grade 12 are exempt from the Global and Science Regents examinations), do provide some flexibility in meeting the requirements. This provision however, does not apply to students who spend as little as 1 day enrolled in a New York State high school prior to grade 11. The exemption provisions currently in place only cover a student who enters a New York high school for the first time in grade 11. Students of military families often transition in and out of the state multiple times in a 4 year period.

In addition, a transfer student may have taken a comparable course in a subject leading to a Regents exam years earlier in their sending school. Upon entry into a New York high school, students often need to schedule review classes or retake courses in order to prepare for an assessment covering instruction they completed earlier in their high school career.

Proposed Regulatory Amendments

In accordance with Chapter 328 of the Laws of 2014, the Department recommends creating a new section 100.20 of the Commissioner's Regulations to make it clear that notwithstanding any other provision of law or regulation to the contrary, school districts and charter schools shall comply with the provisions of Education Law §§ 3300-3318 relating to educational records, enrollment, placement decisions, excused absences, residency determinations and graduation requirements for military students covered under the new law.

Moreover, the proposed amendment provides that, a public school district or charter school shall accept the following to meet the diploma requirements for such students in New York State:

(1) exit or end of course examinations required for graduation in the sending state, where the principal from the school in the sending state attests in writing to the principal of the school in the receiving state that the student has achieved a satisfactory passing score on such exam(s) and that he/she has met the proficiency standards for the course(s) assessed in the sending state; provided that, prior to accepting such exam(s), the principal of the school in the receiving state may request additional information regarding the course(s) and exam(s) from the principal of the school in the sending state;

(2) national norm referenced achievement tests, where the principal from the school in the sending state attests in writing that the student has achieved a score equal to or greater than the national grade equivalent corresponding to the grade in which the corresponding Regents examination required for graduation is typically administered; and

(3) where the principal of the school in the sending state has accepted course credit for a course that would typically culminate in an examination required for graduation in New York State, the principal of the school in the receiving state shall accept any corresponding alternative end of course local examination for such course(s), where the principal from the school in the sending state attests in writing that the student has achieved a score on such exam that meets the proficiency standards for the course assessed in the sending state; provided that, prior to accepting such exam(s), the principal of the school in the receiving state may request additional information regarding the course(s) and exam(s) from the principal of the school in the sending state.

If none of the alternatives outlined above can be accommodated by the principal of the school in the receiving state for a student transferring into such school at the beginning of or during grade 12, then the principal of the school in the receiving state shall provide written notice to the principal of the school in the sending state which shall include notice that the school district in the sending state shall ensure that the student receives a diploma from the school district in the sending state if the student meets the graduation requirements of the school district in the sending state. In the event that the sending state is not a member of the interstate military compact, the receiving state shall use best efforts to facilitate on-time graduation of the student using the exams described above.

In addition, the proposed amendment would stipulate that all students, including students of military families, who spent three or fewer semesters in a New York State school prior to returning to a New York school in grade 11 or later, would also be subject to the existing assessment exemptions for Global History and Geography and Science outlined in the current regulation.

Physical Education Requirements

Currently, the diploma requirements require that a student complete 2 units of credit in Physical Education (PE) and that students participate in PE every semester they are enrolled in school, even if they have met the required 2 credits and remain in school beyond their senior year. According to the 2016 Shape the Nation Report published by the Society of Health and Physical Education, 9 states require ½ credit in PE, 19 states require 1 credit, 5 states require 1.5 credits and only 4 states require 2 credits in PE.

Students who transfer to New York high schools part way through high school are finding themselves severely under credited in PE because their sending state did not require instruction in PE every semester. This often results in, at best, course selections being impacted due to the necessity to enroll in 2 or 3 PE courses each semester to catch up, or at worst, students not graduating on time.

Therefore, the Department further proposes a revision to section 100.5(d)(5) of Commissioner's Regulations to allow all students (not just students of military families), who transfer into a registered New York state high school from another state, to be exempt from the required two units of credit requirement in physical education to meet the diploma requirements. Instead, such students shall be required to enroll in physical education courses every semester they are in a registered New York State high school, and shall earn ¼ unit of credit for each semester of physical education completed in a registered New York State high school to meet the diploma requirements.

The Department further proposes an amendment to allow students who have earned the required number of credits in physical education to meet the diploma requirements, but may need more than 8 semesters to graduate due to other course or assessment deficiencies, to be permitted to stop enrolling in physical education courses. Often students need to return beyond their senior year to make up a failed course or attend preparatory sessions to pass failed assessments, and the current regulation requires these students to enroll in physical education courses for those semesters as well, even though they have met the required number of diploma credits for graduation. The proposed amendment will eliminate this requirement.

The proposed amendment does not require any reporting, recordkeeping or other professional services to comply.

3. COSTS:

The proposed amendment does not impose any costs beyond those imposed by statute.

4. MINIMIZING ADVERSE IMPACT:

The purpose of the proposed amendment is to implement Chapter 328 of the Laws of 2014 relating to the Interstate Compact for Military Children and to make amendments to the physical education requirements for individuals who transfer to a New York State school from an out of state school. No alternatives were considered and there should be no adverse impact from the proposed amendment.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed amendment is to implement Chapter 328 of the Laws of 2014 relating to the Interstate Compact for Military Children and to make amendments to the physical education requirements for individuals who transfer to a New York State school from an out of state school.

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.

State Board of Elections

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Use of Independent Automated Audit Tools

I.D. No. SBE-28-17-00004-P

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

Proposed Action: Addition of section 6210.20 to Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102(1), (17) and 9-211

Subject: Use of independent automated audit tools.

Purpose: To implement the amendment to Election Law 9-211 permitting use of independent automated audit tools.

Text of proposed rule: Section 6210 is amended by adding a new subdivision 6210.20, to read as follows:

6210.20 Use of Independent Automated Audit Tool

(a) Use of Independent Automated Audit Tool

(1) Notwithstanding the requirement of 6210.18 that the post-election audit shall be a "manual" or "hand" count, a board of elections may use an independent automated audit tool approved by the state board of elections pursuant to subdivision one of section 9-211 of the Election Law, to perform a machine-assisted audit in accordance with the substantive requirements of 6210.18. Machine-assisted audit results shall then stand in place of the manual count for all audit purposes. The configuration of such audit tool for use in a machine-assisted audit shall be done in a bipartisan manner, or may be done by an independent third party, subject to bipartisan review and validation. Such ballot configuration shall include pre-election test processes, pursuant to Part 6210.8 of these regulations.

(b) Definitions

For purposes of this section:

(1) "Independent, automated audit tool" shall mean software, device or other similar product which is developed without access to proprietary election management software or hardware, and is based upon separate software that is programed separate and apart from any election management software that is used to configure ballots and tabulate votes as cast on certified voting systems.

(2) "Machine-assisted audit" shall mean an audit pursuant to 6210.18 utilizing automated tools approved for county board use by the state board, to scan ballots, then comparing audit results to those produced from voting system results media, and which further requires the manual comparison of some ballots or voter-verified paper audit records to ensure a human-observable check of vote tabulation which does not depend upon any voting system's hardware or software component.

(c) Confirmation of Machine-Assisted Audit Accuracy

(1) A manual comparison of a requisite number of audited ballots (or voter-verified paper audit records) shall be made to confirm, by means of a human-observable check, the vote tabulation accuracy of the independent, automated audit tool.

(2) The requisite number of machine-assist ballots to be manually compared:

Number of Machine Assisted Audited Ballots	*Number of Manually Compared Ballots*
< 2,500	*25*
2,501 -- 5,000	*32*
5,001 -- 7,500	*39*
7,501 -- 10,000	*46*
10,001 -- 20,000	*56*
20,001 -- 30,000	*66*
30,001 -- 40,000	*76*
40,001 -- 50,000	*86*
50,001 -- 60,000	*96*
60,001 -- 70,000	*106*
70,001 -- 80,000	*116*
80,001 -- 90,000	*126*
90,001 -- 100,000	*136*

If the number of machine assist audited ballot exceeds 100,000 the number to be manually compared shall be 136 plus.05% (.0005) of the number of machine assisted audited ballots in excess of 100,000.

(3) The machine-assisted audited ballots to be compared shall be randomly selected from the total number of machine-assist audited ballots in the county. Such random selections shall be made by a random number generator or such other process approved by the state board. The selection shall be based on a sequential number assigned to each machine-assisted ballot reflecting the order in which the ballot is reviewed by the independent automated tool.

(4) The expansion of any audit in which an independent automated audit tool is used shall be based on the same criteria provided for in (e)(1) of 6210.18.

(d) Implementation Procedures

The county board of elections shall adopt procedures based upon the State Board's standard post-election audit procedures for machine assisted audits no later than upon the completion of acceptance testing of any automated audit tool, and such county-specific procedures shall be filed with the state board of elections. Such specific procedures shall not take effect until approved by the state board of elections.

Text of proposed rule and any required statements and analyses may be obtained from: Brian L. Quail, Esq., New York State Board of Elections, 40 North Pearl Street, Suite 5, Albany, New York 12207-2729, (518) 474-2063, email: brian.quail@elections.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Election Law § 3-102(1) and § 3-102(17) give the State Board of Elections the authority to promulgate rules relating to the administration of the election process. Election Law § 9-211 authorizes the state board of elections to approve use of an independent automated audit tool to perform the audit of voter verifiable audit records.

2. Legislative objectives: The principle purpose of this proposal is to provide standards and procedural guideposts for an Election Law § 9-211audit using an independent automated audit tool, as provided for by Election Law § 9-211.

3. Needs and benefits: This proposal effectuates the automated audit process provided for by the legislature in Election Law § 9-211, and such process allows county boards of elections to use independent automated audit tools, with appropriate safeguards and manual confirmation, to perform ballot count audits.

4. Costs: The proposed amendment is cost neutral in that it does not require the use of an independent audit tools. Jurisdictions not wishing to use an independent automated tool would see no change in current procedures and requirements.

5. Local government mandates: There are no additional responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or other special district. The legislature authorizes the optional use of an automated audit tool.

6. Paperwork: This proposal imposes no new reporting or regulatory filing requirements.

7. Duplication: This proposal does not impose any duplicative regulatory burden or reporting requirements.

8. Alternatives: The primary alternative to this regulation is to have no regulation permitting the use of independent audit tools which would frustrate the legislative intent behind Chapter 515 of the Laws of 2015. The use of an independent automated audit tool is optional; county boards of elections may continue to use completely manual audits.

9. Federal standards: This rulemaking is unrelated to any Federal rule or standard.

10. Compliance schedule: Compliance can be immediate upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

Under SAPA 202-b(3)(a), when a rule does not impose an adverse economic impact on small business or local government and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on such entities, the agency may file a Statement in Lieu of. This rule will not impact small business operations or local government functions. This rule provides an optional tool to be used to perform an audit pursuant to Election Law § 9-211; the underlying audit requirement is not changed. It imposes no additional compliance, regulatory or reporting requirements on local governments or small businesses.

Rural Area Flexibility Analysis

Under SAPA 202-bb(4)(a), when a rule does not impose an adverse economic impact on rural areas and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, the agency may file a Statement in Lieu of. This rule has statewide application, authorizing the use of independent automated audit tools to perform the unchanged audit requirements of Election Law § 9-211. The proposed rule does not create any materially new reporting, recordkeeping or other routine compliance requirements other than to define how the optional use of the independent automated audit tool will be accomplished. Accordingly, this rule has no adverse impact.

Job Impact Statement

Under SAPA 201-a(2)(a), when it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. The proposed amendment provides for the optional use of an independent automated audit tool to perform audits under Election Law § 9-211. This rulemaking imposes no regulatory burden on any facet of job creation or employment.

Department of Environmental Conservation

NOTICE OF ADOPTION

Special Permit Requirement to Hunt or Trap Bobcats in the Harvest Expansion Area in Central and Western NY

I.D. No. ENV-17-17-00007-A

Filing No. 433

Filing Date: 2017-06-23

Effective Date: 2017-07-12

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

Action taken: Amendment of sections 2.20 and 6.2 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0303, 11-0917, 11-1101, 11-1103 and 11-1105

Subject: Special permit requirement to hunt or trap bobcats in the Harvest Expansion Area in central and western NY.

Purpose: Revise regulations to remove the special permit requirement to hunt or trap bobcats in the Harvest Expansion Area.

Text or summary was published in the April 26, 2017 issue of the Register, I.D. No. ENV-17-17-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Michael Schiavone, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8883, email: michael.schiavone@dec.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 Environmental Conservation (DEC) received 28 comments on the proposed amendments to bobcat hunting and trapping regulations during the 45-day public comment period (April 26 – June 9, 2017). The amended regulations will remove the requirement for an additional "special permit" to hunt or trap bobcats in the "Harvest Expansion Area" (HEA; select Wildlife Management Units in central and western New York).

Some comments simply offered support or opposition to the proposed regulations, whereas others offered more detailed arguments for or against the proposal.

Many comments simply stated support for or opposition to trapping or hunting of bobcats and/or other wildlife species. People who were opposed to the proposed regulation stated their personal values against killing animals, a belief that human use of wildlife is inappropriate, and/or a belief that taking of wildlife should only be allowed to alleviate human-wildlife conflicts. We realize that many people do not approve of hunting, trapping, or other activities that involve capture or killing of wildlife. However, New York's Environmental Conservation Law (ECL), as established by the New York State Legislature, specifically authorizes trapping and hunting of animals as a legitimate use of our wildlife resources. Consequently, the bobcat management plan and this regulation provide for the continued use of bobcats, while ensuring that it is done on a sustainable basis. This is accomplished through setting of appropriate seasons across the state, specifying allowable trapping techniques, and monitoring bobcat populations and harvests. In addition, the harvest opportunity offered by promulgation of this regulation has a foundation in the central tenets of the North American Model of Wildlife Conservation - wildlife is a public trust resource and may be sustainably used for legitimate purposes. In accordance with the ECL and the North American Model, the question of whether to allow or not allow hunting and trapping of bobcats, or any other furbearing species, was not addressed in this rulemaking.

Some commenters indicated that the special permit requirement should be maintained within the HEA. This regulatory proposal is consistent with actions described in the Bobcat Management Plan. The special permit requirement within the HEA was designed to allow collection of biological and hunting/trapping effort data. These data were collected for three seasons and are no longer needed. If DEC biologists need to collect these data again in the future to assess changes in harvest pressure or relative abundance over time, they can conduct a random survey of hunters and trappers rather than have a regulatory requirement that all hunters and trappers must obtain a special permit.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Management of Crustaceans, Horseshoe Crabs (HSC) and Whelk; Protection of Terrapin

I.D. No. ENV-28-17-00003-P

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

Proposed Action: Amendment of Parts 44 and 50 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0330(6) and 13-0331(7)

Subject: Management of crustaceans, horseshoe crabs (HSC) and whelk; protection of terrapin.

Purpose: Modify rules on terrapin excluder device, HSC harvest limit and whelk reporting.

Text of proposed rule: 6 NYCRR 44.2(a)(3) is amended to read as follows:

(3) 'Terrapin Excluder Device' means a rectangular [metal] device not larger than (in either dimension) [6] *four and three-quarters* inches wide by [2] *one and three-quarters* inches high attached to the end of the entrance funnel of a crab trap.

Paragraph 6 NYCRR 44.2(d)(1) is repealed.

New paragraph 6 NYCRR 44.2(d)(1) is adopted to read as follows:

(1) A terrapin excluder device, as defined in paragraph 44.2(a)(3) of this section, must be used on all non-collapsible, Chesapeake-style crab pots or traps that are fished in the areas detailed below:

(i) within the bays, harbors, coves, rivers, tributaries and creeks that enter into Long Island Sound;

(ii) within the harbors, coves, ponds, rivers, and creeks that enter into Flanders Bay, Great Peconic Bay, Cutchogue Harbor, Little Peconic Bay, Hog Neck Bay, Noyack Bay, Southold Bay, Shelter Island Sound, Pipes Cove, Greenport Harbor, Orient Harbor, Hallock Bay, Northwest Harbor, Gardiners Bay, Napeague Bay and Fort Pond Bay;

(iii) within the rivers, tributaries, creeks and basins that enter into Jamaica Bay, Hempstead Bay, South Oyster Bay, Great South Bay, Moriches Bay and Shinnecock Bay on the south shore of Long Island;

(iv) within the creeks and tributaries that enter into Raritan Bay, Arthur Kill and Kill Van Kull surrounding Staten Island; and

(v) within the tributaries and creeks of the Hudson River that lie within the marine and coastal district, as defined in Environmental Conservation Law 13-0103, including the waterways within Piermont marsh.

6 NYCRR 44.2(d)(2) and (3) are amended to read as follows:

(2) The terrapin excluder device, as defined in paragraph 44.2(a)(3) of this section, shall be securely fastened inside each funnel to effectively reduce the size of the funnel opening to no larger than [six] *four and three-quarters* inches wide and [two] *one and three-quarters* inches high.

(3) *If the department determines that mortality of diamondback terrapin ("Malaclemys terrapin") in blue crab pots is causing a decline in the terrapin population of a given water body or area that is not listed in paragraph (d)(1) of this Section, the department may by order mandate use of terrapin excluder devices in such areas.* The Director, [Bureau] *Division* of Marine Resources, is authorized to issue orders to designate areas in which terrapin excluders are required pursuant to this section.

Paragraph 6 NYCRR 44.3(a)(4) is amended to read as follows:

(4) 'Harvest limit' means the maximum number of horseshoe crabs that can be [harvested and/or landed by a vessel during a period of time, not less than 24 hours, in which fishing is conducted. If a vessel is not used in the harvest of horseshoe crabs, the harvest limit means the maximum number of horseshoe crabs that can be harvested and possessed per licensed individual, during a period of time, not less than 24 hours, in which fishing is conducted. Harvesters may not at any time possess live horseshoe crabs aboard their vessel in excess of the number permitted under the harvest limit.] *taken or possessed by a permit holder in a 24 hour period. No more than two harvest limits may be possessed aboard a vessel or in a vehicle, provided that at least two permit holders are on board the vessel or in the vehicle.*

6 NYCRR Section 50.1 is renumbered to subdivision 50.1(b).

Section 50.1 is amended to read as follows:

50.1 Marine Gastropods

(a) *Definitions.*

(1) 'Carnivorous marine gastropods' shall mean marine snails; including channeled whelk ('Busycotypus canaliculatus'), knobbed whelk ('Busycon carica'), and moon snails (Naticidae family); that prey on other animals.

(2) 'Whelk' shall mean channeled whelk and knobbed whelk.

(b) When the commissioner, or the commissioner's designee authorized to designate shellfish lands as uncertified, determines that carnivorous gastropods may be hazardous for use as food for human consumption, due to the presence of marine biotoxins, he shall take such action as he deems necessary to protect the public health and welfare. The commissioner, or the commissioner's designee authorized to designate shellfish lands as uncertified, may prohibit activities such as, but not limited to, the taking, possessing, processing, packing, transporting, offering or exposing for sale carnivorous gastropods from areas that are designated as uncertified for the harvest of shellfish pursuant to section 47.4 of this Title due to the presence of marine biotoxins in shellfish. The commissioner may advise the general public, the industry and public health officials that carnivorous gastropods may be hazardous for use as food.

A new Section 50.2 is adopted to read as follows:

50.2 Reporting Requirements.

(a) Commercial whelk license holders.

(1) Any person who is the holder of a commercial whelk license issued pursuant to section 13-0330 of the Environmental Conservation Law shall complete and submit an accurate Fishing Vessel Trip Report for each commercial fishing trip, detailing all fishing activities and all species landed, on a form prescribed by the department. The license holder shall submit such fishing reports monthly to the department within 15 days after the end of each month or at a frequency specified by the department in

writing. Fishing Vessel Trip Reports shall be completed, signed, and submitted to the department for each month; if no fishing trips were made during a month, a report must be submitted for that month stating no trips were made. Incomplete Fishing Vessel Trip Reports or unsigned reports will not satisfy these reporting requirements. Any New York license holder who is also the holder of a federal fishing permit issued by NOAA Fisheries Service must instead meet the reporting requirements specified by NOAA Fisheries Service. If requested in writing by the department, New York license holders who also hold federal fishing permits shall submit to the department the state (blue) copy of the Fishing Vessel Trip Report (NOAA Form No. 88-30) for the month or months identified in the written notification.

(2) The Fishing Vessel Trip Report must be completed with all required information, except for information not yet ascertainable, and signed before the vessel arrives at the dock or lands the catch. Information that may be considered unascertainable before arriving at the dock or landing includes dealer name, dealer number, and date sold.

(b) License holders subject to the provisions of this subdivision shall present their Fishing Vessel Trip Reports and make them available for inspection upon the request of an authorized agent of the department or NOAA Fisheries Service. Reports shall be submitted to the department at the following address: NYSDEC Marine Resources, 205 N. Belle Mead Road, Suite # 1, East Setauket, New York 11733. Reports may be mailed, faxed, emailed or submitted by any other method approved by the department.

(c) In fulfillment of these reporting requirements, license holders subject to the provisions of this subdivision may choose to submit fishing trip data online at the Atlantic Coastal Cooperative Statistics Program website, www.accsp.org. Complete and accurate fishing trip submissions to this website will satisfy the reporting requirements specified in this subdivision. License holders who submit fishing data electronically must maintain a dated logbook, on board the specific fishing vessel, that details all fishing activities for each fishing trip. Data to be recorded in this logbook must include the vessel name, date sailed and date landed, species and weight of the species taken during the dated trip, and other information required by the department. Entries must be entered into the logbook before the vessel arrives at the dock or lands the catch.

(d) Failure to file Fishing Vessel Trip Reports as required may disqualify the owner or operator from receiving future licenses or permits pursuant to Part 175 of this title. Any person who falsifies any Fishing Vessel Trip Report shall be subject to the penalties established pursuant to the provisions of Article 71 of Environmental Conservation Law and may be subject to permit revocation pursuant to Part 175 of this Chapter.

Text of proposed rule and any required statements and analyses may be obtained from: Kim McKown, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, New York 11733, (631) 444-0454, email: kim.mckown@dec.ny.gov

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

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

Additional matter required by statute: The action is subject to SEQR as an Unlisted action and a Short EAF was completed. The Department has determined that an EIS need not be prepared and has issued a negative declaration. The EAF and negative declaration are available upon request.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law sections 13-0330(6) and 13-0331(7) give the Department of Environmental Conservation (DEC) broad regulatory authority for the management of crabs, horseshoe crabs ('Limulus' sp.) and whelk ('Busycon' and 'Busycotypus' spp.), provided the regulations are consistent with the compliance requirements of fishery management plans (FMPs) adopted by the Atlantic States Marine Fisheries Commission (ASMFC) and the Federal Fishery Conservation and Management Act.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries in such a way as to protect the natural resources for its intrinsic value to the marine ecosystem and to optimize resource use for commercial and recreational harvesters. The ECL stipulates that management and use of State fish and wildlife resources must be consistent with marine fisheries conservation and management policies and interstate fishery management plans.

3. Needs and benefits:

Terrapin Excluder Device (TED): DEC is proposing regulations that will require the use of TEDs on commercial and recreational non-collapsible crab traps set in the nearshore areas of New York's marine district to prevent diamondback terrapin from entering crab traps and drowning. Terrapin utilize New York's estuaries as feeding grounds and often enter crab traps in search of food. Once inside the trap, they are unable to surface and have been found dead in crab traps. DEC has been approached by environmentalists and researchers stating that mortality from crab traps can be significant on local terrapin populations. They urge DEC to require the use of TEDs on crab traps set in New York's estuaries to protect the terrapin. The drowning deaths of diamondback terrapin in crab traps can be reduced with minimal impact to crab harvest by the use of TEDs.

Horseshoe Crab Harvest Limit: DEC is proposing to allow two horseshoe crab (HSC) permit holders to harvest from a single vessel and transport in a single vehicle; each can possess a single harvest limit. The current rule on HSC harvest limits allows only one harvest limit taken on board fishing vessels regardless of the number of permit holders onboard. HSC permit holders have commented to DEC about the safety hazard of boating alone, especially at night and have requested DEC allow two permit holders to fish together on a vessel and to allow them to each harvest their daily harvest limit. This amendment would also benefit the environment by decreasing the number of vessels required and their emissions. This proposed rule should not impact the horseshoe crab (HSC) resource since the permit holders will still be restricted by the harvest limit.

The HSC harvest limit rule will also be modified to define the harvest limit as a possession limit. This will aid the enforceability of the rule.

Whelk reporting: DEC is proposing to adopt mandatory catch reporting for whelk permit holders. Catch reporting regulations must be consistent for fisheries in New York; all food fish, lobster, and crab permit holders are required by 6 NYCRR Part 40 and Part 44 to report ALL species landed. Whelk permit holders are not subject to Parts 40 and 44 and there are no reporting rules in Part 50 for whelk permit holders. Mandatory harvest reporting for whelk permit holders is necessary to determine the impact of the whelk fishery on the whelk population. In many East Coast states, the whelk fishery has become an alternative fishery to the depleted Southern New England lobster fishery. Currently in New York there are no reporting requirements for whelk permit holders. It is critical for prudent whelk management to collect and process the whelk landings information and determine if there is an adverse impact on the local whelk population in New York.

The Marine Resources Advisory Council supported the proposed rules in this regulatory package at their January 17, 2016 meeting.

4. Costs:

The proposed rule will not impose any costs on DEC or local governments. There may be some costs to permit holders due to the proposed amendments.

Terrapin Excluder Device (TED): Crab permit holders may incur the costs of adding TEDs to crab traps. DEC staff estimate that, on average, a permit holder will need to install TEDs on 60 pots. Commercial crab pots generally have 4 entrances per pot, so 240 TEDs would be needed on average. Metal TEDs cost $1.34 (plastic version cost $1.00), so it would cost approximately $322 to purchase the TEDs for the traps. To help alleviate costs to fishermen, local environmental groups (TNC and Seatuck) have purchased more than 7,000 TEDs to distribute to fishermen for free. Time needed to install the TEDs is approximately 2 minutes per pot, so it would take a permit holder fishing the average number of pots (60) about 2 hours to install the TEDs. Many commercial and recreational crabbers believe TEDs will not only impact the number and size of their blue crab catch, but will also decrease their bycatch, which is often saleable.

Horseshoe Crab Harvest Limit: Costs for horseshoe crab (HSC) permit holders may decrease with the proposed changes to the HSC harvest limit since two permit holders would be able to share vessel costs.

Whelk reporting: Whelk permit holders may incur costs of time and postage for submitting trip catch reports to DEC. However, they may submit their trip catch reports online at no cost.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any state of Federal requirement.

8. Alternatives:

Terrapin Excluder Device

No Action Alternative – This alternative was rejected since diamondback terrapin would continue to be at risk to drowning in crab traps with possible consequences for local populations.

Alternative 1: Require TEDs on all crab traps in the Marine District – This alterative was rejected because permit holders are generally more supportive of a rule that would limit the area of mandated use to the inshore and near shore areas where there is increased interaction between crab traps and terrapins.

Alternative 2: Require the use of a larger 6 inch wide by 2 inch high TED – DEC discussed a 6 inch by 2 inch TED with the Marine Resources

Advisory Council (MRAC) to get feedback. These are the dimensions used by New Jersey. However, DEC received many comments from the public and MRAC recommending that DEC require a smaller TED that is 4 3/4 by 1 3/4 because it will prevent more terrapin from entering traps. This smaller TED is currently required in Delaware and Maryland. Based on the feedback received, the 6 inch by 2 inch TED was rejected, and the proposed rulemaking contains the 4 3/4 by 1 3/4 TED requirement.

Horseshoe Crab Harvest Limit

No Action Alternative – Only a single possession limit would be allowed on a vessel, regardless of how small the limit is. This alternative was rejected because permit holders would continue to be at risk operating a boat and fishing alone, often late at night. In addition, the possession language would continue to be vague on restrictions when permit holders are not fishing from a vessel.

Alternative 1: Allow more than two permit holders and their possession limits on board a vessel – This alternative was rejected because allowing more than two permit holders, each with a daily possession limit, may make enforcement of the harvest limit more difficult, especially at larger daily trip limits.

Whelk reporting

No Action Alternative – DEC will continue to have incomplete information on whelk harvest and will be unable to track fishery trends, determine harvest impacts, and develop valid management strategies.

9. Federal standards:

The proposed amendment complies with the Atlantic States Marine Fisheries Commission's Fishery Management Plans.

10. Compliance schedule:

Regulated parties will be notified by mail or e-mail, through appropriate news releases and via DEC's website of the changes to the regulations. Compliance with the proposed changes, if adopted, will be required as soon as the regulations take effect.

Regulatory Flexibility Analysis

1. Effect of rule:

Terrapin Excluder Device (TED): The proposed rule requires the use of TEDs on commercial and recreational crab traps set in the near shore areas (harbors, creeks, coves, rivers and tributaries) of New York's Marine District. TEDs decrease the size of the entrance to crab traps and make it more difficult for terrapin to enter the traps looking for food, thus preventing their drowning in the trap. In 2016 there were 539 commercial crab permit holders, and an unknown number of recreational crabbers. The rule will only effect crabbers who set traps in the nearshore areas where the major interaction between crab traps and terrapin occur. Most of the commercial fishery occurs in waters offshore of these nearshore waters. While the recreational fishery most likely occurs closer to shore and, while they may be more affected by the TED requirement, the impact per person should not be significant.

Horseshoe Crab (HSC) Harvest Limit: The proposed rule allows two HSC permit holders to harvest from a single vessel and transport in a single vehicle; each can possess a single harvest limit. Currently only one harvest limit is allowed on board a vessel. The proposed amendment will provide a safer working environment for commercial horseshoe crab permit holders. In 2016 there were 410 horseshoe crab permit holders. All permit holders who fish on vessels could take advantage of the proposed rule. The rule may also benefit the environment by decreasing the number of vessels used for taking HSC. The harvest limit rule will also be modified to define the harvest limit as a possession limit. This will aid the enforceability of the rule.

Whelk reporting: The proposed rule institutes mandatory harvest reporting for whelk permit holders. Currently, whelk permit holders are not required to submit catch reports. The proposed amendment will require these permit holders to submit trip catch reports detailing all species landed during their fishing trips. The harvest information provided by whelk harvesters will be used to determine the impact of the fishery on the whelk population.

2. Compliance requirements:

The proposed TED rule requires all commercial and recreational crabbers who fish in near shore waters of New York's marine district to install TEDs on all trap entrances. The whelk reporting rule will require all whelk permit holders to fill out and submit catch reports detailing all species, including whelks, on all fishing trips. There are no compliance requirements for the horseshoe crab harvest limit.

3. Professional services:

None.

4. Compliance costs:

Commercial and recreational crabbers that fish in nearshore waters will need to purchase or make TEDs to install in crab trap entrances on their traps. Local environmental groups have purchased more than 7,000 TEDs to defray compliance costs to commercial crabbers.

There may be decreased income for commercial crab permit holders due to a potential decrease in bycatch of non-targeted crabs and fish, which may be saleable, because of the TEDs on their traps. Horseshoe crab permit holders who take advantage of the increased harvest limit may receive an economic benefit through reduced fuel and vessel maintenance costs.

Whelk permit holders who currently are not required to submit harvest reports may incur minor reporting costs, such as time and postage to send reports to DEC.

5. Economic and technological feasibility:

The addition of TEDs will require crabbers to install the devices themselves or pay to have their crab traps modified. DEC staff estimates that, on average, a permit holder will need to install TEDs on 60 pots. Commercial crab pots generally have 4 entrances per pot, so 240 TEDs would be needed on average. Metal TEDs cost $1.34 (plastic version cost $1.00), so it would cost approximately $322 to purchase the TEDs for the traps. To help alleviate costs to fishermen, local environmental groups (TNC and Seatuck) have purchased more than 7,000 TEDs to distribute to fishermen for free. Time needed to install the TEDs is approximately 2 minutes per pot, so it would take a permit holder fishing the average number of pots (60) about 2 hours to install the TEDs. Whelk permit holders may choose to submit catch reports online and avoid postage costs.

There is no further technology required for small businesses, and this action does not apply to local governments.

6. Minimizing adverse impact:

Terrapin Excluder Device (TED): The Department considered proposing a rule that would require the use of TEDs for all traps set in the marine district. A compromise was reached with permit holders and environmental groups to require the use of TEDs only in traps set in nearshore waters. These nearshore waters are where terrapin and crab traps are most likely to interact, but most crab traps are not set in nearshore waters. This compromise decreases the impact of the rule on crab harvesters.

Horseshoe Crab Harvest Limit: The proposed rule was requested by commercial horseshoe crab permit holders to mitigate at sea safety concerns for permit holders working alone on small vessels. The proposed rule is intended to improve safety and convenience for fishermen and will not impose any adverse impacts on the commercial fishing industry.

Whelk reporting: Catch reports can be submitted on paper, or by fax or online to decrease postage costs.

7. Small business and local government participation:

A public meeting was held December 2013 and information detailing the proposed rule was posted on the Department of Environmental Conservation (DEC) website to elicit public comment on the proposed rules for TEDs and whelk reporting. DEC presented the information at the January 2014 Marine Resources Advisory Council (MRAC) meeting. MRAC supported the proposed rules for whelk harvest reporting. MRAC also supported revised rules for TEDs, most of the recommended revisions are included in this proposed rule. DEC conducted a focus group meeting April 2014 with permit holders, environmentalists, and researchers where it was agreed to revise the initial proposed TED rules. The TED revisions are included in this proposed rule. The current proposed rules were discussed at the July 2015 MRAC meeting. There was not a quorum present, so MRAC could not vote on the proposed rules. The proposed rulemaking was presented again at the January 17, 2016 MRAC meeting. MRAC supported the regulatory package.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a) (b), no such cure period is included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and the resource is protected.

9. Initial review of rule:

DEC will conduct an initial review of the rule within three years as required by SAPA section 207.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. This regulatory package will affect resources, permit holders, and fisheries in the marine and coastal district only. The proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 44 and Part 50, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

Terrapin Excluder Device (TED): The proposed rule will require the use of TEDs on all crab traps in the near shore areas (harbors, creeks, coves, rivers and tributaries) of the marine and coastal district of New York. TEDs are used to decrease the size of the entrance to crab traps and prevent diamondback terrapin from entering the traps. Commercial and recreational crabbers who set traps in the near shore areas will be required

to install TEDs on all entrances of their traps. Research indicates the use of TEDS is unlikely to reduce the catch of legal-sized blue crabs, but may decrease the amount of bycatch of non-target species which commercial permit holders may traditionally sell.

Horseshoe Crab (HSC) Harvest Limit: The proposed rule will allow two horseshoe crab permit holders onboard a single vessel to each harvest and possess a HSC harvest limit during a single fishing trip and to transport two possession limits of HSC in a single vehicle. This will provide a safer working environment for HSC harvesters and reduce costs associated with fishing trips, e.g. fuel costs. The proposed rule will not have an adverse impact on New York commercial horseshoe crab permit holders. Impacts to the HSC population are unlikely since harvest is capped by an annual quota.

Whelk Reporting: The proposed rule will require whelk permit holders to submit catch reports detailing all species taken. This rule is unlikely to impact jobs or income of whelk permit holders.

2. Categories and numbers affected:

Terrapin Excluder Device (TED): In 2016, there were 539 commercial crab permit holders, and an unknown number of recreational crabbers. The proposed rule will only effect crabbers who set traps in the near shore areas of the marine district where the major interaction between diamondback terrapin and crab traps occur. The recreational crab fishery mostly occurs closer to shore; the commercial crab fishery occurs in waters just offshore these near-shore waters. Recreational crabbers, therefore, may be more likely to fish waters affected by the proposed TED requirement than commercial crabbers.

Horseshoe crab possession limit: The proposed rule will allow two HSC permit holders to take two daily possession limits of HSC on board the same vessel and transport the HSC in the same vehicle. In 2016, there were 410 horseshoe crab permit holders. All HSC permit holders who fish on vessels could take advantage of the proposed rule.

Whelk catch reporting: There were 241 whelk permit holders in 2016. The proposed rule will establish mandatory catch reporting for whelk permit holders. This rule will likely have no impact on whelk permit holders or their income.

3. Compliance requirements:

The proposed TED rule requires all commercial and recreational crabbers who fish in near shore waters of New York's marine district to install TEDs on all trap entrances. The whelk reporting rule will require all whelk permit holders to fill out and submit catch reports detailing all species, including whelks, landed on all fishing trips. There are no compliance requirements for the proposed horseshoe crab harvest limit rule.

4. Regions of adverse impact:

The regions most likely to experience any adverse impact are within the marine and coastal district of the State of New York. This area includes all the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the state, including Long Island Sound and the Hudson River up to the Tappan Zee Bridge.

5. Minimizing adverse impact:

Terrapin Excluder Device (TED): The Department considered proposing a rule that would require the use of TEDs for all traps set in the marine district. A compromise was reached with permit holders and environmental groups to require the use of TEDs only in traps set in near shore waters. These near shore waters are where diamondback terrapin and crab traps are most likely to interact. Most commercial crab traps are not fished in near shore waters, thus this modification decreases the impact of the rule on crabbers. In addition, local environmental groups have purchased more than 7,000 TEDs to defray compliance costs to commercial crabbers.

Horseshoe Crab Harvest Limit: The proposed rule was requested by commercial horseshoe crab (HSC) permit holders to mitigate at-sea safety concerns for permit holders working alone on small vessels. The amendment will not impose any adverse impacts on the commercial fishing industry.

Whelk reporting: Catch reports can be submitted on paper, or by fax or online to decrease postage costs.

6. Self-employment opportunities:

Commercial crab, HSC and whelk permit holders are, for the most part, small businesses, usually operated by the owner. These are all limited entry permits and are available in limited quantities to qualified applicants.

7. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

The department will conduct an initial review of the rule within three years as required by SAPA section 207.

Department of Financial Services

EMERGENCY RULE MAKING

Title Insurance Agents, Affiliated Relationships, and Title Insurance Business

I.D. No. DFS-18-17-00022-E
Filing No. 431
Filing Date: 2017-06-22
Effective Date: 2017-06-22

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

Action taken: Amendment of Parts 20 (Regulations 9, 18 and 29), 29 (Regulation 87), 30 (Regulation 194) and 34 (Regulation 125); and addition of Part 35 (Regulation 206) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 107(a)(54), 301, 2101(k), 2109, 2112, 2113, 2119, 2120, 2122, 2128, 2129, 2132, 2139, 2314 and 6409

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

Specific reasons underlying the finding of necessity: Long-sought and critically needed legislation to license title insurance agents was enacted as part of Chapter 57 of the New York Laws of 2014, which was signed into law by the governor on March 31, 2014. Chapter 57 took effect on September 27, 2014.

A number of existing regulations that apply to insurance producers generally are amended to make them applicable to title insurance agents. Specifically, Part 20 addresses temporary licenses (Insurance Regulation 9), addresses appointment of insurance agents (Insurance Regulation 18), and regulates premium accounts and fiduciary responsibilities of insurance agents and insurance brokers (Insurance Regulation 29), and are amended to include references to title insurance agents. Part 29 (Insurance Regulation 87) addresses special prohibitions regarding sharing compensation with other licensees with respect to certain governmental entities and is amended to address a limited exception for title insurance business insuring State of New York Mortgage Agency and certain other circumstances. Part 30 (Insurance Regulation 194) addresses insurance producer compensation transparency and is amended to reflect specific requirements in new Insurance Law section 2113 for title insurance agents. Part 34 (Insurance Regulation 125) governs insurance agents and brokers that maintain multiple offices and is amended to clarify the applicability of the regulation to title insurance agents. In addition, a new Part 35 (Insurance Regulation 206) is added that address unique circumstances regarding title insurance agents.

It is critical for the protection of the public that appropriate rules and regulations are in place on and after the effective date of Chapter 57 to apply to newly-licensed title insurance agents and the title insurance business generated. Although the Department has diligently developed regulations to implement Chapter 57, due to the short time frame, it is necessary to promulgate the rules on an emergency basis for the furtherance of the general welfare.

Subject: Title insurance agents, affiliated relationships, and title insurance business.

Purpose: To implement requirements of chapter 57 of Laws of 2014 regarding title insurance agents and placement of title insurance business.

Substance of emergency rule (Full text is posted at the following State website: http://www.dfs.ny.gov): The following sections are amended:

Section 20.1, which specifies forms for temporary licenses, is amended to make technical changes and to add references to title insurance agents.

Section 20.2, which specifies forms of notice for termination of agents, is amended to make technical changes and to add references to title insurance agents.

Section 20.3, which governs fiduciary responsibility of insurance agents and brokers, including maintenance of premium accounts, is amended to make technical changes and to add references to title insurance agents.

Section 20.4, which governs insurance agent and broker recordkeeping requirements for fiduciary accounts, is amended to make technical changes and to add references to title insurance agents.

Section 29.5, which implements Insurance Law section 2128, governing placement of insurance business by licensees with governmental entities, is amended to make technical changes and to conform to amendments to section 2128, with respect to title insurance agents.

Section 29.6 is amended to remove language regarding return of disclosure statements.

Section 30.3, which governs notices by insurance producers regarding the amount and extent of their compensation, is amended by adding a new subdivision that modifies the requirements of the section with respect to title insurance agents, in order to conform to new Insurance Law section 2113(b).

Section 34.2, which governs satellite offices for insurance producers, is amended by adding a new subdivision that exempts from certain provisions of that section a title insurance agent that is a licensed attorney transacting title insurance business from the agent's law office.

A new Part 35 is added governing the activities of title insurance agents and the placement of title insurance business. The new sections are:

Section 35.1 contains definitions for new Part 35.

Section 35.2 specifies forms for title insurance agent licensing applications.

Section 35.3 specifies change of contact information required to be filed with the Department.

Section 35.4 addresses affiliated business relationships.

Section 35.5 addresses referrals by affiliated persons and the required disclosures in such circumstances.

Section 35.6 addresses minimum disclosure requirements for title insurance corporations and title insurance agents with respect to fees charged by such corporation or agent, including discretionary or ancillary fees.

Section 35.7 provides certain other minimum disclosure requirements.

Section 35.8 governs the use of title closers by title insurance agents and title insurance corporations.

Section 35.9 establishes record retention requirements for title insurance agents.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-18-17-00022-P, Issue of May 3, 2017. The emergency rule will expire August 20, 2017.

Text of rule and any required statements and analyses may be obtained from: Paul Zuckerman, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5286, email: paul.zuckerman@dfs.ny.gov

Consolidated Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate these amendments and the new Part derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 107(a)(54), 301, 2101(k), 2109, 2112, 2113, 2119, 2120, 2122, 2128, 2129, 2132, 2139, 2314, and 6409 of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent as the head of the Department of Financial Services ("Department").

FSL section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded to the Superintendent 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, among other things.

Insurance Law section 107(a)(54) defines title insurance agent.

Insurance Law section 2101(k) defines insurance producer to include title insurance agent.

Insurance Law section 2109 addresses temporary licenses for title insurance agents and other insurance producers.

Insurance Law section 2112 addresses appointments by insurers of insurance agents and title insurance agents.

Insurance Law section 2113 requires that title insurance agents and persons affiliated with such title insurance agents provide certain disclosures to applicants for insurance when referring such applicants to persons with which they are affiliated. Section 2113 also requires the Superintendent to promulgate regulations to enforce the affiliated person disclosure requirements and to consider any relevant disclosures required by the federal real estate settlement procedures act of 1974 ("RESPA"), as amended.

Insurance Law section 2119 permits title insurance agents to charge fees for certain ancillary services not encompassed within the rate of premium provided its pursuant to a written memorandum.

Insurance Law section 2120 addresses the fiduciary responsibility of title insurance agents and other producers.

Insurance Law section 2122 addresses advertising by title insurance agents and other insurance producers.

Insurance Law section 2128 prohibits fee sharing with respect to business placed with governmental entities.

Insurance Law section 2132 governs continuing education for title insurance agents and other insurance producers.

Insurance Law section 2139 is the licensing section for title insurance agents.

Insurance Law section 2314 prohibits title insurance corporations and title insurance agents from deviating from filed rates.

Insurance Law section 2324 prohibits rebating, improper inducements and other discriminatory behavior with respect to most kinds of insurance, including title insurance.

Insurance Law section 6409 contains specific prohibitions against rebating, improper inducements and other discriminatory behavior with respect to title insurance.

2. Legislative objectives: Long-sought and critically needed legislation to license title insurance agents was enacted as part of Chapter 57 of the New York Laws of 2014, which was signed into law by the governor on March 31, 2014 and took effect on September 27, 2014. By way of background, title insurance agents in New York: (a) handle millions of dollars of borrowers' and sellers' funds, (b) record documents, and (c) pay off mortgages. Yet for years, title insurance agents have conducted business in New York without licensing or other regulatory oversight, standards or guidelines. Because, as a matter of practice in New York, the title insurance agents control the bulk of the title insurance business, including bringing in customers, conducting the searches and other title work, the title insurance corporations often have little choice but to deal with title insurance agents who they may otherwise consider questionable or unscrupulous. Without licensing or regulatory oversight, an unscrupulous title insurance agent who was fired by one title insurer could simply take the business to another title insurer, who is usually more than willing to appoint that title insurance agent.

This lack of State regulation over title insurance agents made for an alarming weakness in New York law, and specifically New York law addressing title insurance rebating and inducement. For example, lack of regulatory oversight and licensing created a gaping loophole, which led to serious breaches of fiduciary duties and exploitation by unscrupulous actors to commit fraud in the mortgage origination and financing process. Over the years, this gap in New York law and lack of regulatory oversight allowed these actors to freely engage in theft, abuse, charging of excessive fees, and illegal rebates and inducements to the detriment of consumers, with little fear of prosecution. These abuses cost consumers of the State millions of dollars and at least one New York title insurer became insolvent because of the activities of its title insurance agents.

3. Needs and benefits: Now that New York law requires title insurance agents to be licensed, a number of existing regulations governing insurance producers need to be amended in order include title insurance agents or to address unique circumstances involving them, including affiliated persons' arrangements and required consumer disclosures. Specifically, Insurance Regulation 9 addresses temporary licenses; Insurance Regulation 18 addresses appointment of insurance agents; and Insurance Regulation 29 regulates premium accounts and fiduciary responsibilities of insurance agents and insurance brokers; and each is amended to include references to title insurance agents. Insurance Regulation 87 addresses special prohibitions regarding sharing compensation with other licensees with respect to certain governmental entities and is amended to address a limited exception for title insurance business insuring State of New York Mortgage Agency and certain other circumstances. Insurance Regulation 194 addresses insurance producer compensation transparency and is amended to reflect specific requirements in new Insurance Law section 2113 for title insurance agents. Insurance Regulation 125 governs insurance agents and brokers that maintain multiple offices and is amended to clarify the applicability of the regulation to title insurance agents. Regulation 125 also is amended to address unique circumstances involving title insurance agents who are also licensed attorneys.

New Insurance Regulation 206 addresses a number of miscellaneous issues involving title insurance agents. Some of these changes simply add provisions that are similar to those that apply to other insurance producers; for example, it prescribes the form of applications and requires licensees to notify the Department of any change of business or residence address. Other provisions of Regulation 206 set forth the new disclosure requirements; require title insurance agents to comply with a rate service organization's annual statistical data call; and address the obligation of title insurance agents and title insurance corporations with respect to title closers. Of particular significance are provisions of the regulations that codify Department opinions regarding affiliated business relations with respect to the applicability of Insurance Law section 6409, which prohibits rebates, inducements and certain other discriminatory behaviors.

4. Costs: Regulated parties impacted by these rules are title insurance agents, which heretofore were not licensed by the Department, and title insurance corporations. They may need to provide new disclosures in accordance with the regulation if they are not already making such disclosures but they already have an obligation to make changes to notices pursuant to the legislation. There are also new reporting requirements to the Department but these are the same that apply with respect to other licensees. In any event, although the cost impact will likely vary among the agents and insurers affected by this regulation, the costs of these new disclosures and reporting requirements should not be significant.

Although the Department already was handling complaints and investigating matters regarding title insurance, because licensing title insurance agents is a new responsibility for the Department, anticipated costs to the Department are at this time uncertain. Existing personnel and line titles will handle any new licensing applications or enforcements issues initially.

These rules impose no compliance costs on any state or local governments.

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

6. Paperwork: The amendments and new rules now apply certain requirements that are applicable to other insurance producers to title insurance agents as well. For example, title insurance agents are made subject to the same reporting requirements as other insurance producers when changing addresses, maintaining records, and submitting applications, and title insurers are required to file certificates of appointment of their title insurance agents with the Department. In addition, to reflect the specific notice requirements of Insurance Law section 2113, the disclosure requirements to insureds under Insurance Regulation 194 are modified for title insurance agents to reflect the statutory requirements. The new law also contains certain new disclosure requirements and the new rules implement those changes, and require certain other disclosures to applicants for insurance, such as a notice advising insureds or applicants for insurance about the different kinds of title policies available to them.

7. Duplication: The amendments do not duplicate any existing laws or regulations.

8. Alternatives: Prior to proposing the consolidated rules in July, 2014, the Department circulated drafts of the proposed rules to a number of interested parties and, as a result, the Department made a number of changes to the initial proposed new Regulation 206, particularly with respect to affiliated business relationships, and title insurance corporation or title insurance agent responsibility for title insurance closers. The Department initially submitted the regulation as a proposed rulemaking that was published in the State Register on July 23, 2014. Because of the critical need to have regulations in effect on and after the September 27, 2014 effective date of Chapter 57, the Department promulgated emergency regulations effective on that date. In response to comments received during the public comment period, the Department made additional changes that were incorporated into the emergency rules, in order to clarify or eliminate unnecessary requirements. Because the proposed regulation has expired, the Department anticipates submitting a new, revised proposal in 2017 that will incorporate additional public comments that the Department has received regarding the initial proposal. To prevent disruption and confusion in the industry until the rules are finalized, however, the emergency regulation is continued unchanged from the versions in effect since September 27, 2014.

9. Federal standards: RESPA, and regulations thereunder, contain certain requirements and disclosures that apply to residential real estate settlement transactions. These requirements are minimum requirements and do not preempt state laws that provide greater consumer protection. The amendments and new rules are not inconsistent with RESPA and, consistent with New York law, provide greater consumer protection to the public.

10. Compliance schedule: Chapter 57 of the New York Laws of 2014 took effect on September 27, 2014. In order to facilitate the orderly implementation of the new law, the Superintendent was authorized to promulgate regulations in advance of the effective date, but to make such regulations effective on that date. The emergency rules have continued unchanged since September 27, 2014.

Consolidated Regulatory Flexibility Analysis

1. Effect of the rule: These rules affect title insurance corporations authorized to do business in New York State, title insurance agents and persons affiliated with such corporations and agents.

No title insurance corporation subject to the amendment falls within the definition of "small business" as defined in State Administrative Procedure Act section 102(8), because no such insurance corporation is both independently owned and has less than one hundred employees.

It is estimated that there are about 1,800 title insurance agents doing business in New York currently. Since they are not currently licensed by the Department of Financial Services ("Department"), it is not known how many of them are small businesses, but it is believed that a significant number of them may be small businesses.

Persons affiliated with title insurance agents or title insurance corporations would not, by definition, be independently owned and would thus not be small businesses.

The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments.

2. Compliance requirements: The proposed rules conform and implement requirements regarding title insurance agents and placement of title insurance business with Chapter 57 of the Laws of 2014, which made title insurance agents subject to licensing in New York for the first time. A number of the rules will make title insurance agents subject to the same requirements that apply to other insurance producers. There are also disclosure requirements unique to title insurance.

3. Professional services: This amendment does not require any person to use any professional services.

4. Compliance costs: Title insurance agents will need to provide new disclosures in accordance with the regulation if they are not already making such disclosures but they already have an obligation to make changes to notices pursuant to the legislation. There are also new reporting requirements to the Department but these are the same that apply with respect to other licensees. In any event, the costs of these new disclosures and reporting requirements should not be significant. The proposed rules now subject title insurance agents to requirements regarding the maintenance of fiduciary accounts that already apply to other insurance producers. The cost impact on title insurance agents will likely vary from agent to agent but should not be significant.

5. Economic and technological feasibility: Small businesses that may be affected by this amendment should not incur any economic or technological impact as a result of this amendment.

6. Minimizing adverse impact: This rule should have no adverse impact on small businesses.

7. Small business participation: The Department initially submitted the regulation as a proposed rulemaking on July 23, 2014. Prior to submission, interested parties, including an organization representing title insurance agents, were given an opportunity to comment on a draft version of these rules, in addition to their opportunity to review and comment on the proposed rulemaking when it was published. The proposed regulation has now expired and the Department anticipates submitting a new, revised proposal in 2017 that will incorporate additional public comments that the Department has received regarding the initial proposal. However, to prevent disruption and confusion in the industry until the rules are finalized, the emergency regulation is continued unchanged from the versions in effect since September 27, 2014.

Consolidated Rural Area Flexibility Analysis

The Department of Financial Services ("Department") finds that this rule does not impose any additional burden on persons located in rural areas, and will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Rural area participation: The Department initially submitted the regulation as a proposed rulemaking on July 23, 2014. Prior to submission, interested parties, including those located in rural areas, were given an opportunity to review and comment on a draft version of these rules, in addition to their opportunity to review and comment on the proposed rulemaking when it was published. The proposed regulation has now expired and the Department anticipates submitting a new, revised proposal in 2017 that will incorporate additional public comments that the Department has received regarding the initial proposal. However, to prevent disruption and confusion in the industry until the rules are finalized, the emergency regulation is continued unchanged from the versions in effect since September 27, 2014.

Consolidated Job Impact Statement

The Department of Financial Services finds that these rules should have no negative impact on jobs and employment opportunities. The rules conform to and implement the requirements of, with respect to title insurance agents and the placement of title insurance business, Chapter 57 of the Laws of 2014, which make title insurance agents subject to licensing in New York for the first time and, by establishing a regulated marketplace, may lead to increased employment opportunity.

Assessment of Public Comment

The agency received no public comment.

New York State Gaming Commission

NOTICE OF ADOPTION

Allow Standardbred Horses Not to Requalify When Uncontrollable Events (e.g. Weather) Prevent Horses from Racing on Regular Basis

I.D. No. SGC-17-17-00004-A
Filing No. 438
Filing Date: 2017-06-27
Effective Date: 2017-07-12

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

Action taken: Amendment of section 4113.1 of Title 9 NYCRR.

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

Subject: Allow standardbred horses not to requalify when uncontrollable events (e.g. weather) prevent horses from racing on regular basis.

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

Text or summary was published in the April 26, 2017 issue of the Register, I.D. No. SGC-17-17-00004-P.

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

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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The Gaming Commission received one public comment which suggested the Gaming Commission adopt the United States Trotting Association rule allowing 60 days before requalifying under all circumstances. The existing 30-day qualifying period is in the best interests of the wagering public because it assures that the horses in a pari-mutuel race are reasonably able to compete.

Department of Health

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Early Intervention Program

I.D. No. HLT-28-17-00009-P

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

Proposed Action: Amendment of Subpart 69-4 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2559-b

Subject: Early Intervention Program.

Purpose: To conform existing program regulations to federal regulations and state statute.

Public hearing(s) will be held at: 1:00 p.m., Aug. 15, 2017 at Webinar: https://www.health.ny.gov/events/meeting; and 10:00 a.m., Aug. 17, 2017 at Auditorium - School of Public Health, University at Albany, One University Place, Rensselaer, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule (Full text is posted at the following State website:www.health.ny.gov/Laws & Regulations/Proposed Rulemaking): This notice of proposed rulemaking amends 10 NYCRR Subpart 69-4, which governs the Early Intervention Program (EIP), to: conform to federal regulations issued by the U.S. Department of Education (34 CFR Parts 300 and 303) and recent amendments to Title II-A of Article 25 of the Public Health Law (PHL). The proposed amendments also streamline conflict of interest provisions on evaluation and service coordinator providers, clarify qualifications of service coordination providers, and add licensed behavior analysts and certified behavior analyst assistants to the list of qualified personnel for the Early Intervention Program.

Section 69-4.1(a) is amended to revise the definition of "approval" to conform to statutory amendments that require all providers to be approved by the Department and allow the Department to require providers to enter into agreements with the Department. A new subdivision (a-1) is added to define "approved provider."

Subdivisions (n), (o), and (p) of section 69-4.1 are amended to conform to federal regulations. Specifically, the amendments distinguish between the evaluation and the initial evaluation to determine eligibility; clarify the definition of "evaluator" as a provider approved to conduct screenings and evaluations; and conform the definition of "family assessment."

Section 69-4.1(ad) is amended to conform to federal regulations, which define "multidisciplinary" to include an individual who is licensed, certified, or registered in more than one discipline for purposes of the multidisciplinary evaluation and assessment.

Section 69-4.1(aj)(2) is amended to revise the definition of "individual provider" to conform to statutory amendments that authorized the Department to approve and enter into agreements with providers and that eliminated the requirement that municipalities contract with providers directly. A new paragraph (3) is added to define "payee provider" as an approved provider that shall directly bill third party and governmental payers for early intervention services in the first instance through the Department's fiscal agent.

Section 69-4.1(ak) is amended and paragraph (4) is added to include licensed behavior analysts and certified behavior analyst assistants to the list of qualified personnel for the EIP.

Subdivision (e) is added to section 69-4.3 to require primary referral sources to complete and transmit a referral form and, with parental consent, to transmit information sufficient to document the primary referral source's concern or basis for suspecting the child has a disability.

Subparagraph (v) is added to section 69-4.4(a)(1) to add licensure, certification, or registration in certain professions as acceptable minimum qualifications for service coordinators.

Section 69-4.4(b)(1) is amended to conform to statutory changes, which require that all providers be approved by the Department.

Section 69-4.5(a)(1) is amended to clarify that payee providers of EIP services must enroll in and, as applicable, be recertified by the Medicaid program and must notify the Department of such recertification on request. Section 69-4.5(a)(4)(iii), related to a Medicaid provider agreement and the reassignment of Medicaid benefits, is repealed.

Section 69-4.5(a)(6), which prohibits an individual provider from being approved as both an evaluator and a service coordinator, is repealed.

Section 69-4.5(c) is repealed and a new subdivision (c) is added to require providers to notify the Department upon certain changes to ownership or status of the provider agency and to clarify that the Department will determine on receipt of such notice whether re-approval of the agency is required.

Subparagraphs (i)-(ix) of section 69-4.5(e)(1) are being revised to make technical amendments and to conform to statutory amendments that provide the Department with the authority to enter into agreements with providers and eliminated the requirement that municipalities are to contract with providers directly; clarify members of the IFSP team; and to streamline conflict of interest provisions relating to marketing.

Subdivisions (f) of section 69-4.5 is amended, opening paragraph of subdivision (h) is amended, and subdivisions (h)(1) and (h)(2) are repealed, to conform to statutory amendments that provide the Department with the authority to enter into agreements with providers and eliminated the requirement that municipalities contract with providers directly.

Section 69-4.5(i) is repealed to conform to statutory amendments that eliminated the State Education Department's (SED) responsibility to approve providers to participate in the EIP.

Section 69-4.6(d) is amended and paragraphs (1), (2), and (3) are added to conform to statutory amendments related to procedures for obtaining children's third party coverage information and written referrals to establish medical necessity.

Section 69-4.7(g)(3) is amended to conform to statutory amendments that require providers to directly bill third party and governmental payers for early intervention services. The proposed regulation also codifies exist-

ing administrative requirements that parental consent be obtained to bill insurers who will apply payment for early intervention services to the annual and lifetime limits specified in the child's insurance policy.

Subdivision (m) is added to section 69-4.7 to conform to statutory amendments that require notification, with parent consent, to the Office of People with Developmental Disabilities (OPWDD) developmental disabilities regional office of a child's potential eligibility for OPWDD services.

Section 69-4.8 is repealed and replaced with new section 69-4.8, titled "Evaluation and Screening of the Child and Assessment of the Child and Family," to conform to revisions to federal regulations. The proposed new section includes: procedures that apply when an evaluator determines to administer a screening, with parent consent, prior to conducting a multidisciplinary evaluation; the parent's right to request a multidisciplinary evaluation at any time; the use of medical and other records to establish a child's eligibility for the EIP without conducting an evaluation; the use of informed clinical opinion as an independent basis to establish a child's eligibility for the EIP; and distinguishes between evaluation procedures to determine eligibility and the child assessment and the voluntary family-directed assessment.

Section 69-4.9(c) is amended to conform to statutory amendments that provide the Department with authority to enter into agreements with providers and eliminated to the requirement that municipalities contract with providers directly.

Section 69-4.9(g)(6) is amended to conform to statutory amendments that require providers to directly bill third party payers prior to billing governmental payers for EIP services rendered, and to clarify documentation required of providers to support claims submitted to the municipality and the Department.

Subdivisions (a)(2) and (a)(3) of section 69-4.11 are repealed and replaced with new subdivisions (a)(2) and (a)(3) to conform the requirements for IFSP meeting participants to federal regulations. Section 69-4.11(b)(3) is repealed.

Section 69-4.11(a)(7)(ii)(a) is amended and subdivisions (a)(7)(ii)(b) through (d) and (b)(3) are repealed to streamline conflict of interest procedures related to EIP providers conducting evaluations and delivering services. The proposed regulation would prohibit an evaluator who conducts an evaluation of a child, or the approved agency which employs or contracts with the evaluator, from delivering EIP services to the child without prior authorization from the Early Intervention Official (EIO).

Subdivisions (a) and (b) of section 69-4.12 are repealed, subdivision (c) is relettered subdivision (e) and new subdivisions (a), (b), (c), and (d) are added. These proposed amendments conform to statutory amendments that assign new responsibilities to municipalities for monitoring of providers and also conform procedures for monitoring of providers with current Department requirements. Relettered subdivision (e) of section 69-4.12 is amended to provide that municipalities continue to have the authority to audit providers that conduct evaluations and provide early intervention services.

Section 69-4.16(d) is amended to conform to federal regulations that require the appointment of a surrogate parent within 30 days after the EIO makes a determination of the child's need for a surrogate parent.

Paragraphs (4) and (5) of subdivision (f) of section 69-4.16 are amended and a new paragraph (6) is added to conform to federal regulations pertaining to the appointment of a surrogate parent to a child in the EIP.

Section 69-4.17(b)(1)(i)(c) is amended to include examples of procedural safeguards available under the EIP in reference to a written notice to parents by the EIO.

Section 69-4.17(b)(2)(ii) is amended to include a reference to the IFSP team members in relation to disagreements on an IFSP.

Paragraphs (1) and (2) are added to section 69-4.17(c) to conform to federal regulations on content of notice to parents regarding personally identifiable information. Additional amendments to section 69-4.17(c) include technical changes to clarify existing language and conform to Public Health Law.

Subdivisions (d)(3) and (e) of section 69-4.17 are amended to conform to federal regulations concerning access and amendments to records. These amendments clarify circumstances under which providers may assume the parent has authority to inspect and review records pertaining to his or her child. The amendment also clarifies that the right to present objections and request amendments to the record apply to information pertaining to the parent, as well as the child. Additionally, section 69-4.17(e)(3)(ii) is amended to clarify that a parent has a right to an administrative hearing in accordance with procedures set forth in regulation when the parent disagrees with a declination to amend a record.

Subparagraphs (vii) and (ix) of section 69-4.17(e)(4) are amended to conform to federal regulations on minimum requirements for administrative hearings to amend the child's record.

Section 69-4.17(g)(3), on requirements for mediation procedures, is amended to conform to federal regulations, which clarify that the mediation process cannot be used to deny or delay a parent's right to an impartial hearing, or deny any other due process rights afforded to the parent; and that a written, signed mediation agreement resulting from a successful full or partial resolution is a legally binding document enforceable in any State court of competent jurisdiction or in a district court of the United States. Section 69-4.17(g)(13)(i) is amended to further clarify that the written agreement must state that all discussions that occurred during the mediation process will remain confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding.

Section 69-4.17(h)(7) is amended to conform to federal regulations that allow the hearing officer assigned to an impartial hearing to grant specific extensions of time beyond the federally-required timeframe of 30 days at the request of either party.

Section 69-4.22(a) is amended, new paragraphs (1) to (4) are added to subdivision (a), subdivisions (b) and (c) are repealed, and subdivision (d) is relettered to subdivision (b), to conform to statutory amendments that require EIP providers to bill third party payers in the first instance, using the Department's fiscal agent. Specifically, the proposed provisions include subrogation of a provider to a child's and family's third party reimbursement, including notice to the insurer by the provider; provider use of the Department's fiscal agent for claiming payment for evaluations and services rendered under the EIP; provider enrollment in one or more health care clearinghouses at the request of the Department or the Department's fiscal agent; and timely submission of claims for payment by providers.

Paragraphs (5), (9), and (14) of section 69-4.24(a) are amended to conform to statutory amendments that: eliminated SED's responsibility to approve EIP providers; eliminated the requirement that municipalities contract with providers directly; and required providers to bill third party payors in the first instance using the Department's fiscal agent.

Section 69-4.24(c) is amended to clarify the residency requirement of the child or parent and to conform to statutory amendments that eliminated the requirement that municipalities contract with providers directly.

Section 69-4.25(a)(4) is amended to conform to statutory amendments that require the service coordinator to arrange for providers to deliver services authorized in IFSPs.

Subdivisions (b)(1)(v) and (e)(1)(iv) of section 69-4.25 are repealed and replaced with new subdivisions to include licensed behavior analysts among professionals qualified to supervise services delivered by applied behavior analysts (ABA aides), and to include certified behavior analyst assistant, as meeting qualifications for an ABA aide.

Section 69-4.26(a) is amended to provide a new reference regarding maintaining early intervention records in a confidential manner.

Paragraph 15 of section 69-4.26(a), on municipal claims to third party payors, is repealed.

Subdivision (b)(12), subdivision (c), and subdivision (c)(2) of section 69-4.26 are amended to conform to statutory amendments that: require providers to bill third party payers in the first instance; provide the Department with the authority to enter into agreements with providers; and eliminated the requirement that municipalities contract with providers directly.

Text of proposed 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

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

Public comment will be received until: Five days after the last scheduled public hearing.

Regulatory Impact Statement

Statutory Authority:

The Early Intervention Program (EIP) is established in Title II-A of Article 25 of the Public Health Law (PHL) and implements Part C of the federal Individuals with Disabilities Education Act (IDEA). Title 34 of the Code of Federal Regulation (CFR), Part 303, regulates the implementation of Part C of IDEA and provides standards to ensure compliance with IDEA. PHL§ 2550(1) establishes the Department of Health (Department) as the lead agency responsible for the general administration and supervision of providers and services under the EIP. PHL § 2550(2) authorizes the Department to establish standards for evaluators, service coordinators, and providers of early intervention services and requires the Department to monitor agencies, institutions, and organizations providing early intervention services to ensure compliance with such standards. PHL § 2559-b authorizes the Commissioner of Health (Commissioner) to adopt regulations necessary to carry out the EIP.

Legislative Objectives:

The legislative objectives of the EIP include providing a coordinated, comprehensive array of services that enhance the development of infants and toddlers with disabilities, thereby minimizing the need for later special education services, in compliance with federal and state laws.

Needs and Benefits:

Revisions to federal regulations have been adopted, in 2011, at 34 CFR Parts 300 and 303 to implement the 2004 reauthorization of IDEA. These amendments require conforming changes in State regulation governing the EIP. In addition, amendments to PHL enacted as part of the 2012-2013 State Budget require conforming revisions to EIP regulations. See L. 2012, ch. 56 (Part A).

The proposed rule will conform the State's EIP regulations to federal regulations and amendments to PHL, in relation to: definitions; the referral process; provider approval; service coordination; evaluation and screening of a child, and assessment of the child and family; standards for service provision; individualized family service plans; monitoring of providers; persons in parental relation and surrogate parents; procedural safeguards; proceeding involving providers of early intervention services; third party payments; and content of child records.

The proposed amendments that conform the regulations to state and federal law, will assist the municipalities and EIP providers by reducing confusion regarding regulatory oversight of the program, by having all the EIP regulations up to date with current federal and state law.

In addition, the Department is proposing amendments to streamline conflict of interest provisions regarding evaluation and service coordination providers, clarify qualifications of service coordination providers, and add licensed behavior analysts and certified behavior analyst assistants to the list of qualified personnel for the EIP. These amendments will result in more services being provided to children in the EIP in a more efficient manner.

The proposed regulations also address administrative actions, including establishing timely filing requirements on the EIP providers, which will improve reimbursement by third party payers and eliminate the payment of late claims except under extraordinary circumstances documented by the provider.

Costs to Regulated Parties:

The proposed regulatory amendments incorporate revisions to federal regulations issued by the U.S. Department of Education (34 CFR Parts 300 and 303) and recent amendments to PHL. These proposed amendments will not impose an additional cost to regulated parties because regulated parties are already complying with the federal and PHL requirements.

The amendment to clarify qualifications of service coordination providers will not impose any additional costs to regulated parties because such amendment simply clarifies what is already required.

In addition, the amendments proposed to streamline conflict of interest provisions regarding evaluation and service coordination providers will likely reduce costs to regulated parties because such amendments create administrative efficiencies by streamlining paperwork requirements.

The adding of licensed behavior analysts and certified behavior analyst assistants to the list of qualified personnel for the EIP will also not impose additional costs to regulated parties because such provisions address concerns related to continuity, capacity, and quality of care for children. EIP providers may achieve cost savings through this amendment because EIP providers may now utilize supervised, certified behavior analyst assistants to assist in the delivery of intensive behavior interventions for children with autism spectrum disorders.

Costs to the Agency, the State and Local Governments for the Implementation of and Continuing Compliance with the Rule:

The proposed regulatory amendments incorporate revisions to federal regulations issued by the U.S. Department of Education (34 CFR Parts 300 and 303) and recent amendments to PHL. These proposed amendments will not impose an additional cost to the Agency, the State or Local Governments because such parties are already complying with the federal and PHL requirements.

The amendment to clarify qualifications of service coordination providers will not impose any additional costs to the Department, the State or local governments because such amendment simply clarifies what is already required.

In addition, the amendments proposed to streamline conflict of interest provisions regarding evaluation and service coordination providers will likely reduce costs to the Department, the State or local governments because such amendments create administrative efficiencies by streamlining paperwork requirements.

The proposed amendments that address administrative actions, including establishing timely filing requirements on the EIP providers, will yield cost savings for localities through improved reimbursement by third party payers and elimination of payment of late claims except under extraordinary circumstances documented by the provider.

The adding of licensed behavior analysts and certified behavior analyst assistants to the list of qualified personnel for the EIP will also not impose additional costs to the Department, the State or local governments because such provisions address concerns related to continuity, capacity, and quality of care for children.

Local Government Mandates:

The proposed rule does not impose any new duty upon any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The proposed rules do not impose any new paperwork requirements upon the State or local governments.

Paperwork requirements will initially increase for payee providers of EIP services who will be required to enroll in one or more healthcare clearinghouses upon the request of the Department or the Department's State Fiscal Agent. However, enrollment in one or more healthcare clearinghouses will ultimately reduce the paperwork burden on payee providers by enabling receipt of third party payer remittance advices in a standardized format.

Duplication:

The proposed rules do not duplicate, overlap, or conflict with relevant rules and other legal requirements of the State or federal government.

Alternatives:

There are no alternatives to the majority of the proposed rules. Amendments to these sections are necessary to comply with recently adopted federal regulations and amendments to State law. With respect to the amendments that would streamline conflict of interest provisions, the alternative of not proposing these regulations was considered. The Department ultimately decided to propose these amendments to address concerns related to continuity and quality of care for children, address personnel shortages in the EIP, and create administrative efficiencies in the program.

The Department presented the proposed regulations to the Early Intervention Coordinating Council (EICC) on September 15, 2016. No specific alternative proposals were recommended by the EICC. Recommendations for clarification of proposed rules in the areas of definitions, provider approval, multidisciplinary evaluation requirements, and conflict of interest provisions were considered and, where applicable, incorporated into the proposal.

Federal Standards:

The proposed amendments will be consistent with the federal standards at 34 CFR Parts 300 and 303.

Compliance Schedule:

The proposed rules will be effective immediately upon adoption. These proposed rules conform current regulation to existing requirements in federal regulations and federal and state statutes.

Regulatory Flexibility Analysis

No Regulatory Flexibility Analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping, or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping, or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Children's Behavioral Health and Health Services

I.D. No. HLT-28-17-00001-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 505.38 to Title 18 NYCRR.

Statutory authority: Public Health Law, section 201; Social Services Law, sections 363-a and 365-a

Subject: Children's Behavioral Health and Health Services.

Purpose: To authorize Medicaid coverage of new behavioral health and health services for children under 21 years of age.

Text of proposed rule: Section 505.38 is added to read as follows:

§ 505.38 Children's Behavioral Health and Health Services.

(a) Purpose: This section promotes the expansion of health and behavioral health services for children/youth under 21 years of age. The

New York State Department of Health (DOH), the New York State Office of Mental Health (OMH), the New York State Office of Alcoholism and Substance Abuse Services (OASAS), and the New York State Office of Children and Family Services (OCFS) (the "State Agencies") shall designate licensed, certified or approved providers to deliver specifically defined services under the Medicaid program.

(b) Services: The following services shall be available to children and youth who are eligible for Medicaid, when provided in accordance with the provisions of this section.

(1) Crisis Intervention (CI) - CI services are provided to a child/youth under age 21, and his/her family/caregiver, who is experiencing a psychiatric or substance use (behavioral health) crisis, and are designed to:

(i) Interrupt and/or ameliorate the crisis experience

(ii) Include an assessment that is culturally and linguistically sensitive

(iii) Result in immediate crisis resolution and de-escalation

(iv) Develop a crisis plan

(2) Other Licensed Practitioner:

(i) A non-physician licensed behavioral health practitioner (NP-LBHP) is an individual who is licensed and acting within his or her lawful scope of practice under Title VIII of the Education Law and in any setting permissible under State law.

(ii) Individual Staff Qualifications:

(a) NP-LBHPs include the following practitioners; each is permitted to practice independently within his or her scope of practice:

(1) licensed psychoanalysts;

(2) licensed clinical social workers (LCSWs);

(3) licensed marriage and family therapists; and

(4) licensed mental health counselors.

(b) NP-LBHPs also include licensed master social workers (LMSWs) under the supervision of licensed clinical social workers (LCSWs), licensed psychologists, or psychiatrists.

(3) Community Psychiatric Support and Treatment (CPST): CPST services are goal-directed supports and solution-focused interventions intended to achieve identified goals or objectives as set forth in the child's/youth's individualized treatment plan. CPST is designed to provide community-based services to children or youth and their families or caregivers who may have difficulty engaging in formal office settings, but can benefit from community based rehabilitative services. CPST allows for delivery of services within a variety of permissible settings including community locations where the child/youth lives, works, attends school, engages in services (e.g. provider office sites), and/or socializes. This includes the implementation of Evidence Based Practices with approval by the State Agencies.

(4) Psychosocial Rehabilitation (PSR): PSR services are provided to children or youth and their families or caregivers to implement interventions outlined in the individualized treatment plan to compensate for or eliminate functional deficits and interpersonal and/or environmental barriers associated with a child/youth's behavioral health needs. The intent of PSR is to restore, rehabilitate, and support a child/youth's functional level as much as possible and as necessary for the integration of the child/youth as an active and productive member of their community and family with minimal ongoing professional interventions. Activities included must be task oriented and intended to achieve the identified goals or objectives as set forth in the child/youth's individualized treatment plan.

(5) Family Peer Support (FPS): FPS services are an array of formal and informal services and supports provided to families caring for/raising a child/youth who is experiencing social, emotional, developmental, medical, substance use, and/or behavioral challenges in their home, school, placement, and/or community. FPS services provide a structured, strength-based relationship between a credentialed Family Peer with relevant lived experience as determined appropriate by the State Agencies as defined in subdivision (a) of this section and the parent/family member/caregiver for the benefit of the child/youth. Activities must be task oriented and intended to achieve the identified goals or objectives as set forth in the child/youth's individualized treatment plan.

(6) Youth Peer Support and Training (YPST): YPST services are youth formal and informal services and supports provided to youth who are experiencing social, emotional, medical, developmental, substance use, and/or behavioral challenges in their home, school, placement, and/or community centered services. These services provide the training and support necessary by a credentialed youth peer with relevant lived experience as determined appropriate by the State Agencies as defined in subdivision (a) of this section to ensure engagement and active participation of the youth in the treatment planning process and with the ongoing implementation and reinforcement of skills learned throughout the treatment processes. YPST activities must be intended to develop and achieve the identified goals and/or objectives as set forth in the youth's individualized treatment plan. YPST services delivered are based on the individualized treatment plan developed by the licensed practitioner working with the youth.

(c) Provider Qualifications:

(1) Any child serving agency or agency with children's behavioral health and health experience must have the necessary licensure, certification, designation, or approval from DOH, OMH, OASAS, or OCFS to provide the services authorized by this section.

(2) Any licensed practitioner providing behavioral health or health services authorized under this section must work in a child serving agency or agency with children's behavioral health and health experience, as described in paragraph (1) of this subdivision.

(3) Crisis Intervention practitioners must work in a child serving agency, or agency with children's behavioral health and health experience, that obtains or possesses a current license or authorization to provide crisis and/or crisis treatment services, consistent with the requirements of paragraph (1) of this subdivision.

(4) Any organization seeking to provide any service authorized by this regulation and to serve the general population needing mental health services must be licensed or authorized to do so by OMH in addition to obtaining the licensure, certification, designation, or approval described in paragraph (1) of this subdivision.

(5) Any organization seeking to provide any service authorized by this regulation and to serve the general population needing substance use disorder services must be certified, designated or authorized to do so by OASAS in addition to obtaining the licensure, certification, designation, or approval described in paragraph (1) of this subdivision.

(d) Designation of Providers:

(1) As a prerequisite to providing any of the services authorized by this section, a provider must receive a designation from DOH, OMH, OASAS, or OCFS. Being designated to provide services authorized by this section is not a substitute for possessing any required State licensure, certification, authorization or credential, and any such designation may be conditioned upon obtaining or modifying a required licensure, certification, authorization or credential.

(2) To be eligible for designation, a provider must submit an application on a form required by the State agencies and must:

(i) Be enrolled in the Medicaid program prior to commencing service delivery;

(ii) Be a qualified provider as described in subdivision (c) of this section and maintain its license, certification or approval with that state agency;

(iii) Be in good standing according to the standards of each agency by which it is licensed, certified or approved;

(iv) Be a fiscally viable agency;

(v) Meet developed criteria as outlined in the Provider Designation Application guidance and form, including adequate explanation of how the provider meets such criteria; and

(vi) Adhere to the Standards of Care described in the Children's Health and Behavioral Health Services Transformation Medicaid State Plan Provider Manual for Children's BH Early and Periodic Screening and Diagnostic Testing (EPSDT) Services which have been incorporated by reference in this Part and have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the document entitled: Children's Health and Behavioral Health Services Transformation Medicaid State Plan Provider Manual for Children's BH Early and Periodic Screening and Diagnostic Testing (EPSDT) Services, published in December, 2016, and any subsequent updates. This document incorporated by reference may be examined at the Office of the Department of State, 99 Washington Ave, Albany, NY 12231 or obtained from the Department of Health, 99 Washington Ave, Albany, NY 12231.

(3) A provider designated to provide services authorized by this section will be assigned a lead State agency (DOH, OASAS, OCFS or OMH), based on the primary population served, location, and indicated line of business on the provider application, which will be responsible, in collaboration with the other State agencies, for monitoring and oversight of the provider.

(4) If a provider is designated to provide Community Support and Treatment services, it may seek approval of the lead State agency and DOH to utilize, in the provision of services, specified evidence-based techniques drawn from cognitive-behavioral therapy and/or other evidence based psychotherapeutic interventions.

(5) Nothing contained herein shall authorize a provider to provide medical services, except as otherwise authorized by law.

(e) Rescinding a designation.

(1) A provider who fails to comply with laws, regulations and policies may have its designation rescinded by the lead State agency, which will consult with the other State agencies before taking such action. The provider has 14 business days to appeal the action to the lead State agency. The lead State agency shall respond with a final decision within 14 business days of appeal.

(2) A provider whose designation was rescinded may apply for redesignation pursuant to subdivision (d) of this section. The provider must show that it corrected the problems that led to the rescission. An on-site and/or desk evaluation may be conducted by the lead State agency prior to approving the redesignation request.

(f) Reimbursement: Reimbursement for children's behavioral health and health services must be in accordance with the rates established by the Department and approved by the Director of the Division of Budget.

Text of proposed 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

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.

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single State agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, which shall be consistent with law, and as may be necessary to implement the State's Medicaid program. SSL section 365-a authorizes Medicaid coverage for specified medical care, services and supplies, together with such medical care, services and supplies as authorized in the regulations of the Department.

Legislative Objectives:

Section 365-a of the SSL requires Medicaid to pay for part or all of the cost of medical, dental, and remedial care, services, and supplies that are necessary to prevent, diagnose, correct or cure conditions that cause acute suffering, endanger life, result in illness or infirmity, interfere with a person's capacity for normal activity, or threaten some significant handicap.

Needs and Benefits:

The Children's Behavioral Health Medicaid Redesign Team Subcommittee made a recommendation in 2011 that the children's system needed improvement with respect to service access, funding and earlier intervention for children/families. These improvements, combined with transitioning services to Medicaid Managed Care, would fill gaps in services and produce better long term outcomes for children and families.

The proposed regulation would add a new section 505.38 to 18 NYCRR authorizing six new behavioral health and health services for Medicaid eligible children/youth under 21 years of age: crisis intervention (CI); community psychiatric support and treatment (CPST); psychosocial rehabilitation (PSR); family peer support services (FPSS); youth peer support and training (YPST); and services of other licensed practitioners. The new services would be available to any Medicaid eligible child who meets medical necessity criteria. Adoption of the regulation would be contingent upon the receipt of approval from the Centers for Medicare and Medicaid Services to add these new services to New York's State plan for medical assistance.

Under the proposed regulation, the Office of Mental Health, Office of Alcoholism and Substance Abuse Services, and the Office of Children and Family Services would designate qualified programs, individuals, and/or organizations to deliver these new behavioral health and health services. Such a designation would not substitute for possessing any license, certificate or approval otherwise required by law in order to provide the service in question; nor would it allow the designee to provide medical services except as otherwise authorized by law.

The proposed regulation describes: the nature of the new services; the qualifications of providers eligible to furnish the services; the process by which the State agencies will designate qualified providers; the monitoring and oversight of designated providers; the rescission of designations of providers who fail to comply with applicable laws, regulations, and policies; and reimbursement for the services.

These new behavioral health and health services are intended to allow for earlier intervention for children experiencing behavioral health and physical health challenges, in order to address such challenges before there is a need for higher intensity, costlier services, and to promote home and community based living outcomes. Further, the services may be delivered in any setting in which children and families live, socialize and learn. By increasing community based interventions, New York will strengthen families' abilities to care for their own children and will redistribute resources so that children and families receive the right services, at the right time, and in the right amount.

Costs:

Costs to the Regulated Parties:

The parties affected by the proposed regulation would be any agency/provider that applies for a designation to provide one or more of the new Medicaid services. Once an agency/provider is designated, it must contract with Medicaid Managed Care Organizations (MCOs) in order to offer, provide, and bill for the services. There may be costs associated with ensuring that their agency has the appropriate Health Information Technology (HIT) systems in order to properly support health information management across computerized systems and the secure exchange of health information between consumers, providers, payers, and quality monitors. The agencies/providers will also need to ensure they have the appropriate billing technology to be able to appropriately bill the MCO for the services they provide.

Costs to the State Government:

The Department expects that the availability of the new behavioral health and health services will reduce the need for emergency room visits, inpatient hospitalizations, and costlier treatment modalities. In addition, some of the new services are currently paid for by Medicaid, but through waiver programs rather than as State plan services. Because of these offsets, the Department estimates that the annual State share cost of covering the new services, when fully implemented, will be $33.6 million.

(Dollars in millions)

	2017-18 Impact		2018-19 Impact		Full Annual Impact	
Proposal	Gross	State	Gross	State	Gross	State
Six New SPA Services	$50.2M	$25.1M	$141.2M	$70.6M	$200.8M	$100.4M
Offsets for MA Savings/Existing Services	($30.4M)	($15.8M)	($84.5M)	($44.7M)	($125.6)	($66.8M)
Net Costs for New Services	$19.8M	$9.2M	$56.7M	$25.9M	$75.2M	$33.6M

Cost Information and Methodology upon which the Cost Analysis is Based:

Other Licensed Practioner (OLP) services:

Generally:

- Per day caps are 4.
- Efficiency percentages have been made consistent between on-site and off-site (25%) for all services.
- OLP Individual and group services are priced using the salary assumption of a licensed staff person ($80,000).

Assessment Codes:

- Salary assumptions have increased for Doctors from $160K to $195K.
- Salary assumptions have decreased for Psychologists from $100K to $95K.
- Information gathered from DOL 2015 for NYS 2015 wage.
- OLP assessment procedure codes have been changed back to original codes (90791/90792).

Group:

- Every group size has its own rate code with specific rates for group sizes of 2, 3 or 4.
- Providers will bill one client in the group using the off-site rate code with the remaining clients being billed using the "on-site" rate code for the appropriate group size.

Psychosocial Rehabilitation (PSR), Community Psychiatric Support and Treatment (CPST), Family Peer Support (FPS), and Youth Peer Support and Training (YPST):

Generally:

- Per day caps have been increased from 4 to 6 (for PSR and CPST).
- Per day caps have been increased from 4 to 8 (for FPS and YPST).
- Efficiency percentages have been made consistent between on-site and off-site (25%) for all services.
- Individual and group services are priced using the salary assumption of a Bachelors level staff person ($40,000).

Group:

- Every group size has its own rate code with specific rates for group sizes of 2, 3 or 4.
- Providers will bill one client in the group using the off-site rate code with the remaining clients being billed using the "on-site" rate code for the appropriate group size.

Local Government Mandates:

There are no associated local government mandates.

Paperwork:

Any agency/provider that wants to provide any of the new services must go through an application/designation process; to be eligible for designation, any child serving agency or agency with children's behavioral health and health experience must have the necessary licensure, certifica-

tion, designation, or approval from DOH, OMH, OASAS, or OCFS to provide the services authorized by the proposed regulation, and any practitioner providing the new behavioral health or health services must operate within a child serving agency or agency with children's behavioral health and health experience that has such licensure, certification, designation, or approval.

Once designated, it is the responsibility of the agency/provider to contract with Medicaid MCOs to offer, provide, and bill for the new services. DOH, OASAS, OCFS, and OMH will not be responsible for assisting providers in obtaining contracts with MCOs, aside from confirming the provider's designation status.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

The six state plan services are part of a larger effort of the Medicaid redesign team developed within the larger stakeholder process. The state plan service is supported by CMS. There were no significant alternatives to be considered.

Federal Standards:

This rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

Regulated persons should not have compliance issues due to their associated agency being a child serving agency or agency with children's behavioral health and health experience that has the necessary licensure, certification, designation, or approval from DOH, OMH, OASAS, or OCFS to provide the services authorized by the proposed regulation.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

Job Impact Statement

Nature of Impact:

The proposed regulation would allow the Department to authorize the Office of Mental Health (OMH), Office of Alcoholism and Substance Abuse Services (OASAS), and the Office of Children and Family Services (OCFS) to designate qualified programs, providers and/or organizations to deliver the following new behavioral health and health services under the Medicaid program for eligible children/youth under 21 years of age: crisis intervention; community psychiatric support and treatment (CPST); psychosocial rehabilitation (PSR); family peer support services (FPSS); youth peer support and training (YPST); and services of other licensed practitioners.

The impact of the proposed regulation would be to expand employment opportunities for these agencies/providers. Agencies/providers who successfully go through the designation process to be able to provide these new Medicaid services may need to hire additional qualified staff to provide these services.

Categories and Numbers Affected:

The following job titles would be affected:

- Non-Physician Licensed Behavioral Health Professional
- Licensed Psychoanalyst
- Licensed Clinical Social Worker
- Licensed Marriage and Family Therapist
- Licensed Mental Health Counselor
- Licensed Master Social Worker

Regions of Adverse Impact:

The decision to apply to be designated as a provider of one or more of the new Medicaid behavioral health and health services for children and youth is voluntary. Therefore the proposed regulation would not adversely impact any region.

Minimizing Adverse Impact:

New York State would not have to minimize any adverse impact because this is not a mandatory process. Agencies/providers would only apply for designation if they choose to.

Self-Employment Opportunities:

There will not be opportunities for self-employment. In order for an agency/provider to become designated to deliver any of the new services, it must be a child serving agency or an agency with children's behavioral health and health experience, and any practitioner providing behavioral health or health services must operate in a child serving agency or agency with children's behavioral health and health experience, that has the necessary licensure, certification, designation, or approval from DOH, OMH, OASAS, or OCFS to provide the services authorized by the proposed regulation.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Low Income Customer Program Provisions of the Authority's Tariff for Electric Service

I.D. No. LPA-28-17-00010-P

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

Proposed Action: The Long Island Power Authority proposes to update the Authority's Tariff for Electric Service to update its low income customer programs.

Statutory authority: Public Authorities Law, section 1020-f(u) and (z)

Subject: Low income customer program provisions of the Authority's Tariff for Electric Service.

Purpose: To update the Authority's low income programs consistent with the rest of New York State.

Public hearing(s) will be held at: 10:00 a.m., Aug. 28, 2017 at Long Island Power Authority, H. Lee Dennison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; and 2:00 p.m., Aug. 28, 2017 at Long Island Power Authority, 333 Earle Ovington Blvd., 4th Fl., Uniondale, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule: The Long Island Power Authority staff proposes to modify the Tariff for Electric Service ("Tariff") effective October 1, 2017 (i) to improve the affordability of its rates and charges for customers with low incomes consistent with similar improvements being made by other utilities in New York State pursuant to recent orders of the New York Public Service Commission, (ii) to provide a four-month grace period for re-enrollment in the low income discount program following expiration of a customer's enrollment, and (iii) to update the eligibility requirements for low income customer discounts.

Text of proposed rule and any required statements and analyses may be obtained from: Justin Bell, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 719-9886, email: jbell@lipower.org

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

Public comment will be received until: Five days after the last scheduled public hearing.

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Private Service Bureaus

I.D. No. MTV-28-17-00002-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 77.7 of Title 15 NYCRR. This rule was previously proposed as a consensus rule making under I.D. No. MTV-11-17-00005-P.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 395

Subject: Private Service Bureaus.

Purpose: To replace the outdated DMV website address in the regulation.

Text of proposed rule: Paragraph (f) of section 77.7 is amended to read as follows:

(f) Disclaimer. In any case where a private service bureau maintains a website that offers services or transactions that an applicant could obtain or conduct directly via the department's own website, the private service bureau must include the following language by means of a statement on its website on any pages that refer to licensing, registration or title transactions performed by the New York State Department of Motor Vehicles in a noticeably distinct manner and in bold type New York State Department of Motor Vehicles in a noticeably distinct manner and in bold type of a size equal to at least 24 point type:

NOTICE

THIS TRANSACTION OR SERVICE IS ALSO AVAILABLE, AT NO ADDITIONAL CHARGE, DIRECTLY FROM THE OFFICIAL DEPARTMENT OF MOTOR VEHICLES WEBSITE AT [www.nysdmv.com] *www.dmv.ny.gov*

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

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

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

Consensus Withdrawal Objection

15 NYCRR 77.7 - Objection to Consensus Regulation

The Chair, for the Assembly Standing Committee on Transportation and the Assembly Chair for the Administrative Regulations Review Commission felt as though the proposed rule did not give adequate notice about the change of the DMV website address.

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department of Motor Vehicles (DMV). VTL section 395 authorizes the Commissioner to promulgate regulations governing the conduct of private service bureaus (PSBs).

2. Legislative objectives: The Legislature enacted VTL section 395 to authorize the Commissioner of Motor Vehicles to regulate PSBs, which are entities that "engage in the business of assisting for hire in securing licenses to drive motor vehicles or registrations or titles of motor vehicles…" The Commissioner is authorized to promulgate reasonable regulations regarding the conduct of PSBs. In 2011, the Commissioner promulgated a regulation requiring PSBs to post on their websites a disclaimer that transactions or services are also available, at no additional charge, directly from the DMV website. The proposed rule updates the address of the DMV website and, therefore, meets the legislative objective of promulgating reasonable regulations regarding PSB requirements.

3. Needs and benefits: PSBs are "entities that "engage in the business of assisting for hire in securing licenses to drive motor vehicles or registrations or titles of motor vehicles…" In 2011, the Commissioner promulgated a regulation requiring PSBs to post on their websites a disclaimer that transactions or services are also available, at no additional charge, directly from the DMV website. The proposed rule updates the DMV website address from www.nysdmv.com to www.dmv.ny.gov. This amendment is necessary so that PSBs are aware of the current website address and that customers are put on notice of such address. This will benefit motorists who wish to perform motor vehicle transactions, for no additional PSB charge, on the DMV website.

4. Costs: a. To regulated parties: None. This is a minimal tasks for PSBs.

b. Cost to the State, the agency and local governments: This proposed rule will impose no costs on the State, the DMV or local governments.

c. Source: DMV's Counsel's Office.

5. Local government mandates: The proposed rule will not impact local governments.

6. Paperwork: The proposed rule does not impose new paperwork requirements.

7. Duplication: This proposed regulation does not duplicate or conflict with any State or Federal rule.

8. Alternatives: No other alternatives were considered. A no action alternative was not considered.

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

10. Compliance schedule: Implementation of this regulation would occur upon its adoption.

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

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

This proposed rulemaking would require private service bureaus to update their web pages and note the current DMV website address. Due to its narrow focus, this rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

Public Service Commission

NOTICE OF ADOPTION

Gas Metering Equipment

I.D. No. PSC-45-16-00009-A

Filing Date: 2017-06-21

Effective Date: 2017-06-21

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

Action taken: On 6/15/17, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Edison) petition to use the Elster-American AT210TC meter for gas metering applications in New York State.

Statutory authority: Public Service Law, section 67(1)

Subject: Gas metering equipment.

Purpose: To approve Con Edison's petition to use the Elster-American AT210TC meter for gas metering applications in New York State.

Substance of final rule: The Commission, on June 15, 2017, adopted an order approving Consolidated Edison Company of New York, Inc.'s petition to use the Elster-American AT210TC meter for gas metering applications in New York State, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(16-G-0541SA1)

NOTICE OF ADOPTION

Gas Metering Equipment

I.D. No. PSC-45-16-00010-A

Filing Date: 2017-06-21

Effective Date: 2017-06-21

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

Action taken: On 6/15/17, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Edison) petition to use the Sensus RT230TC meter for gas metering applications in New York State.

Statutory authority: Public Service Law, section 67(1)

Subject: Gas metering equipment.

Purpose: To approve Con Edison's petition to use the Sensus RT230TC meter for gas metering applications in New York State.

Substance of final rule: The Commission, on June 15, 2017, adopted an order approving Consolidated Edison Company of New York, Inc.'s petition to use the Sensus RT230TC meter for gas metering applications in New York State, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(16-G-0542SA1)

NOTICE OF ADOPTION

Electric Metering Equipment

I.D. No. PSC-47-16-00011-A

Filing Date: 2017-06-22

Effective Date: 2017-06-22

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

Action taken: On 6/15/17, the PSC adopted an order approving Itron Inc.'s (Itron) petition to use the Itron OpenWay Riva CENTRON C2SRDe and CN2SRDe meters for electric metering applications in New York State.

Statutory authority: Public Service Law, section 67(1)

Subject: Electric metering equipment.

Purpose: To approve Itron's petition to use the Itron OpenWay Riva CENTRON meters for electric metering applications in New York State.

Substance of final rule: The Commission, on June 15, 2017, adopted an order approving Itron Inc.'s petition to use the Itron OpenWay Riva CENTRON C2SRDe and CN2SRDe meters in Forms 1S, 2S and 12S for electric metering applications in New York State, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(16-E-0480SA1)

NOTICE OF ADOPTION

Submetering of Electricity and Waiver of 16 NYCRR Section 96.5(k)(3)

I.D. No. PSC-03-17-00008-A

Filing Date: 2017-06-22

Effective Date: 2017-06-22

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

Action taken: On 6/15/17, the PSC adopted an order approving 33 Bond St. LLC's (33 Bond St.) petition to submeter electricity at 33 Bond Street, Brooklyn, New York and waiver of 16 NYCRR § 96.5(k)(3).

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

Subject: Submetering of electricity and waiver of 16 NYCRR § 96.5(k)(3).

Purpose: To approve 33 Bond St.'s petition to submeter electricity and waiver of 16 NYCRR § 96.5(k)(3).

Substance of final rule: The Commission, on June 15, 2017, adopted an order approving 33 Bond St. LLC's petition to submeter electricity at 33 Bond Street, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. and waiver of the energy audit and energy efficiency plan requirements of 16 NYCRR § 96.5(k)(3), subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(16-E-0682SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-08-17-00008-A

Filing Date: 2017-06-22

Effective Date: 2017-06-22

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

Action taken: On 6/15/17, the PSC adopted an order approving 45 East 22nd Street Property LLC's (45 East 22nd Street) notice of intent to submeter electricity at 45 East 22nd Street, New York, New York.

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

Subject: Submetering of electricity.

Purpose: To approve 45 East 22nd Street's notice of intent to submeter electricity.

Substance of final rule: The Commission, on June 15, 2017, adopted an order approving 45 East 22nd Street Property LLC's notice of intent to submeter electricity at 45 East 22nd Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(16-E-0506SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-12-17-00014-A

Filing Date: 2017-06-22

Effective Date: 2017-06-22

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

Action taken: On 6/15/17, the PSC adopted an order approving Sheepshead Bay Road Owner LLC's (Sheepshead Bay) notice of intent to submeter electricity at 1501 Voorhies Avenue, Brooklyn, New York.

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

Subject: Submetering of electricity.

Purpose: To approve Sheepshead Bay's notice of intent to submeter electricity.

Substance of final rule: The Commission, on June 15, 2017, adopted an order approving Sheepshead Bay Road Owner LLC's notice of intent to submeter electricity at 1501 Voorhies Avenue, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223, (518) 486-

2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(16-E-0699SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Effectuate Amendments to 49 CFR Part 192 Mandated by the Pipeline and Hazardous Materials Safety Administration

I.D. No. PSC-28-17-00006-P

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

Proposed Action: The Commission is considering a proposal filed by Hamilton Municipal Utilities Commission to revise its gas tariff schedule, P.S.C. No. 1, regarding the installation of excess flow valves pursuant to changes to 49 CFR part 192.

Statutory authority: Public Service Law, section 66(12)(b)

Subject: To effectuate amendments to 49 CFR part 192 mandated by the Pipeline and Hazardous Materials Safety Administration.

Purpose: To consider revisions to its gas tariff schedule regarding the installation of excess flow valves.

Substance of proposed rule: The Commission is considering a proposal filed by Hamilton Municipal Utilities Commission to revise P.S.C. No. 1 – Gas, to effectuate amendments to 49 CFR Part 192 regarding the installation of excess flow valves mandated by the Pipeline and Hazardous Materials Safety Administration's Final Rule issued on October 14, 2016 and effective April 14, 2017. The revisions to 49 CFR Part 192 require that excess flow valves be installed at the customer request. The proposed amendments have an effective date of September 19, 2017. The full text of the proposal 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-0362SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Property Tax Reconciliation Surcharge

I.D. No. PSC-28-17-00007-P

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

Proposed Action: The Commission is considering a petition filed by New York American Water Company, Inc. to reduce its property tax reconciliation surcharge by continuing to defer $487,095 of the company's outstanding balance.

Statutory authority: Public Service Law, sections 89-b and 89-c

Subject: Property tax reconciliation surcharge.

Purpose: To consider the continued deferral of $487,095 in property taxes.

Substance of proposed rule: The Public Service Commission is considering a petition filed June 1, 2017 by New York American Water, Inc. (the Company) to reduce its property tax reconciliation surcharge by continuing to defer $487,095 of the Company's outstanding property tax balance. This deferral would result in the continuation of the Company's current property tax reconciliation surcharge rate of $323.40 per customer annually, avoiding an increase of $113.15 in the annual customer surcharge. 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-W-0300SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

FASB Update on Pension and OPEB Net Periodic Costs

I.D. No. PSC-28-17-00008-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 adopt the update issued by the Financial Accounting Standards Board (FASB) on pension and other post retirement benefits (OPEB) net periodic costs for rate making purposes.

Statutory authority: Public Service Law, section 66

Subject: FASB update on pension and OPEB net periodic costs.

Purpose: To consider whether to adopt the FASB update.

Substance of proposed rule: The Commission is considering the update issued by the Financial Accounting Standards Board (FASB) on pension and other post retirement benefit (OPEB) net periodic costs for rate making purposes. The Financial Accounting Standards Board (FASB) issued an update for Compensation – Retirement Benefits in March 2017, which changes the accounting and presentation for pension and other post retirement benefits (OPEB) in order to provide better transparency for financial statement users. Among the requirements of the update is changing the non-service cost components of the pension/OPEB net periodic costs, currently included as operating expenses, to non-operating expenses and recording such expenses outside the subtotal of income from operations. As a result, only the service cost component of the pension/OPEB net periodic costs is allowed to be capitalized. The non-service cost components capitalized under the current FASB rules would be shifted from capital to expense. The shift of the non-service cost components of pension/OPEB costs from capital to expense, if adopted, is expected to result in an immediate revenue requirement impact, as these previously capitalized costs would be expensed, as opposed to being recovered over a longer period of time through depreciation expense. In addition to any rate impact, the update may also necessitate changes in the Commission's Uniform System of Accounts (USOA), the Annual Reports (AR) jurisdictional utilities are required to file, and the Commission's Statement of Policy and Order Concerning the Accounting and Ratemaking Treatment for Pensions and Postretirement Benefits Other Than Pensions issued on September 7, 1993 in Case 91-M-0890 (Policy Statement). Through this proceeding, the Commission will evaluate the pros and cons associated with adopting the update in order to determine whether to adopt the update; emulate the status quo (capitalize the non-service costs to a deferred asset/liability, based on the labor capitalization rate, and amortize it as if it were plant, so there would be no revenue requirement impact compared to today's accounting); or consider other alternatives, if any. The Commission will also evaluate the need, if any, for changes to its USOA, AR forms and/or Policy Statement. The full case record 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, any proposed relief 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-0363SP1)

Department of State

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Electronic Storage of Safety Data Sheets

I.D. No. DOS-28-17-00005-P

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

Proposed Action: Amendment of section 160.25(d) of Title 19 NYCRR.

Statutory authority: General Business Law, section 404

Subject: Electronic storage of safety data sheets.

Purpose: To permit appearance enhancement licensees to maintain safety data sheets electronically.

Text of proposed rule: The Title and Subdivision (d) of section 160.25 of Title 19 NYCRR are amended to read as follows:

Section 160.25. Chemical storage and [M]SDS

(d) An owner shall have on file all [Material] Safety Data Sheets ([M]SDS) for inspection. [M]SDS must be [stored] *maintained* in *a written or electronic format* [a metal file] *so that SDS are readily* accessible to all employees. *Owners shall ensure that all employees are aware of the location of, and have access to SDS*.

Text of proposed rule and any required statements and analyses may be obtained from: David Mossberg, NYS Dept. of State, 123 William St., 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@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.

Regulatory Impact Statement

1. Statutory authority:

General Business Law § 404 authorizes the Department of State to promulgate rules and regulations to establish standards of practice for appearance enhancement licensees in order to ensure the health, safety and welfare of the public.

2. Legislative objectives:

As set forth in General Business Law § 404, the statutory intent of Article 27 of the General Business Law, is to further the health, safety and welfare of the public by ensuring that appearance enhancement services are provided in a sanitary and safe manner.

3. Needs and benefits:

The proposed rule will advance the statutory intent of Article 27 of the General Business Law by protecting consumers from harmful chemicals. At the same time, the rule will reduce storage related costs for businesses by permitting them to retain "safety data sheets" ("SDS") electronically rather than in hard copy form. SDS provide instructional information on how to treat reactions to chemicals used in appearance enhancement services. To protect consumers from possible injury, these forms must be readily available to practitioners. Current regulations have been interpreted, by the Department of State as well as the Appearance Enhancement Advisory Board, as allowing appearance enhancement businesses to retain SDS (formerly known as "material safety data sheets") in hard copy form only. Clarifying this existing regulation to expressly permit the retention of SDS electronically will ensure consumer protection while permitting businesses to reduce storage related costs.

4. Costs:

a. Costs to regulated parties:

Appearance enhancement businesses are required to maintain SDS for every product and other chemical used in the salon. Licensees have reported that it is costly to comply with this requirement. To safely maintain SDS, businesses must obtain a metal cabinet which costs, on average, approximately $100.00. SDS must be stored in binders that are segregated by product and manufacturer. Because SDS are provided by manufacturers online and via electronic means, businesses must download and print the forms for storage. In addition to the cost of a file cabinet, the costs associated with purchasing and maintaining SDS binders and printing the forms are approximately $700.00 to $800.00 annually.

The proposed rule is anticipated to afford businesses the option of avoiding these costs by permitting the electronic storage of SDS. The Appearance Enhancement Advisory Board, which broadly represents members of the appearance enhancement industry, has informed the Department that the vast majority of regulated businesses already own computer equipment that will allow them to elect electronic storage as an option, at no cost. For those without computer equipment suitable for storing SDS, traditional methods of hard copy storage will remain an option.

b. Costs to the Department of State:

The rule does not impose any costs upon the Department of State. SDS are not created or maintained by the Department of State. While the Department of State does inspect appearance enhancement businesses, and sanction licensees for failure to maintain SDS, investigations of any alleged violations will continue to be conducted by existing enforcement staff. Similarly, hearings related to violations of the rule will continue to be conducted by the Department's Litigation Unit and Office of Administrative Hearings.

5. Local government mandates:

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

6. Paperwork:

The rule does not impose any new paperwork requirements.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered not promulgating a regulation but determined it was necessary to do so in order to provide guidance to the industry.

9. Federal standards:

This rule does not exceed or conflict with any existing federal standard.

10. Compliance schedule:

Current regulations require the retention of SDS. The proposed regulation does not alter this requirement and, rather, is intended to make compliance easier and more cost-effective for businesses by providing electronic storage as another option for retention of SDS. As such, the rule will be effective upon adoption and will not include a cure period for licensees.

Regulatory Flexibility Analysis

1. Effect of rule:

Current regulation requires appearance enhancement businesses to retain "material safety data sheets" ("MSDS") in a metal filing cabinet that is accessible to all employees. The proposed rule would permit licensees to retain these forms, now known as "Safety Data Sheets" ("SDS") electronically, thereby allowing businesses to reduce storage costs while still ensuring that the important safety information is readily available if necessary. Currently, the Department of State ("Department") licenses approximately 29,770 appearance enhancement businesses. Most of these establishments are small businesses.

The rule does not apply to local governments.

2. Compliance requirements:

The proposed rule does not impose any reporting or new recordkeeping requirements on appearance enhancement businesses.

3. Professional services:

Appearance enhancement businesses will not need to rely on professional services to comply with the requirements of the proposed rule. Licensees will have the option of storing paper copies of SDS or retaining these forms electronically. To store the forms electronically, licensees may either scan the form into a computer or obtain an electronic copy from the product manufacturer. These forms are readily available online.

4. Compliance costs:

Appearance enhancement businesses are required to maintain SDS for every product and other chemical used in the salon. Licensees have reported that it is costly to comply with this requirement. To safely maintain SDS, businesses must obtain a metal cabinet which costs, on average, approximately $100.00. SDS must be stored in binders that are segregated by product and manufacturer. Because SDS are provided by

manufacturers online and via electronic means, businesses must download and print the forms for storage. In addition to the cost of a file cabinet, the costs associated with purchasing and maintaining SDS binders and printing the forms are approximately $700.00 to $800.00 annually.

The proposed rule is anticipated to afford businesses the option of avoiding these costs by permitting the electronic storage of SDS. The Appearance Enhancement Advisory Board, which broadly represents members of the appearance enhancement industry, has informed the Department that the vast majority of regulated businesses already own computer equipment that will allow them to elect electronic storage as an option, at no cost. For those without computer equipment suitable for storing SDS, traditional methods of hard copy storage will remain an option.

5. Economic and technological feasibility:

The Department has determined that it will be economically and technologically feasible for small businesses to comply with the proposed rule. Appearance enhancement businesses are already required to maintain SDS. The proposed rule provides a more cost-effective option for storing these forms. It is believed that most appearance enhancement businesses have a computer which could be used to maintain electronic copies of material safety data sheets. If not, businesses may maintain hard copies of these forms. Additionally, the Department is aware that many business already keep SDS electronically.

6. Minimizing adverse economic impact:

The Department has not identified any adverse economic impact of this rule. The rule does not impose any additional reporting or new record keeping requirements on appearance enhancement professionals. It is believed that the rule will help businesses reduce costs by providing a more cost-effective option for storing SDS.

7. Small business participation:

Prior to proposing the rule, the Department discussed the proposal at an open meeting of the NYS Appearance Enhancement Advisory Committee. At this meeting, members of the public were invited to provide public comment. No comments were made on the proposed regulation. In addition, the Department published a substantially similar copy of the proposed text on its website. No comments were received in response. The Department will continue its outreach after the rule is formally proposed in a Notice of Proposed Rule Making in the State Register. The publication of the rule in the State Register will provide additional notice to small businesses. Additional comments will be received and entertained by the Department during the formal public comment period indicated in this Notice of Proposed Rule Making.

8. Compliance:

Given that the proposed rule will permit businesses to reduce costs, the rule will be effective as of the date the Notice of Adoption is published in the State Register. Appearance enhancement licensees are already required to maintain SDS as such no business currently in compliance with the Department's regulation will become out of compliance by reason of adoption.

Rural Area Flexibility Analysis

1. Effect of the rule:

Current regulation requires appearance enhancement businesses to retain "material safety data sheets" ("MSDS") in a metal filing cabinet that is accessible to all employees. The proposed rule would permit licensees to retain these forms, now known as "Safety Data Sheets" ("SDS") electronically, thereby allowing businesses to reduce storage costs while still ensuring that the important safety information is readily available if necessary. Currently, the Department of State ("Department") licenses approximately 29,770 appearance enhancement businesses. Some appearance enhancement businesses are located in rural areas.

2. Compliance requirements:

The proposed rule does not impose any reporting or new recordkeeping requirements on appearance enhancement businesses.

3. Professional services:

Appearance enhancement businesses will not need to rely on professional services to comply with the requirements of the proposed rule. Licensees will have the option of storing paper copies of SDS or retaining these forms electronically. To store the forms electronically, licensees may either scan the form into a computer or obtain an electronic copy from the product manufacturer. These forms are readily available online.

4. Compliance costs:

Appearance enhancement businesses are required to maintain SDS for every product and other chemical used in the salon. Licensees have reported that it is costly to comply with this requirement. To safely maintain SDS, businesses must obtain a metal cabinet which costs, on average, approximately $100.00. SDS must be stored in binders that are segregated by product and manufacturer. Because SDS are provided by manufacturers online and via electronic means, businesses must download and print the forms for storage. In addition to the cost of a file cabinet, the costs associated with purchasing and maintaining SDS binders and printing the forms are approximately $700.00 to $800.00 annually.

The proposed rule is anticipated to afford businesses the option of avoiding these costs by permitting the electronic storage of SDS. The Appearance Enhancement Advisory Board, which broadly represents members of the appearance enhancement industry, has informed the Department that the vast majority of regulated businesses already own computer equipment that will allow them to elect electronic storage as an option, at no cost. For those without computer equipment suitable for storing SDS, traditional methods of hard copy storage will remain an option.

5. Minimizing adverse economic impacts:

The Department of State has not identified any adverse economic impact of this rule. The rule does not impose any additional reporting or new record keeping requirements on appearance enhancement professionals. It is believed that the rule will help businesses reduce costs by providing a more cost-effective option for storing SDS.

6. Rural area participation:

Prior to proposing the rule, the Department discussed the proposal at an open meeting of the NYS Appearance Enhancement Advisory Committee. At this meeting, members of the public were invited to provide public comment. No comments were made on the proposed regulation. In addition, the Department published a substantially similar copy of the proposed text on its website. No comments were received in response. The Department will continue its outreach after the rule is formally proposed in a Notice of Proposed Rule Making in the State Register. The publication of the rule in the State Register will provide additional notice to small businesses. Additional comments will be received and entertained by the Department during the formal public comment period indicated in this Notice of Proposed Rule Making.

Job Impact Statement

A JIS is not required because it is evident from the subject matter of this rule that it will have no impact on jobs and employment opportunities. Appearance enhancement licenses are currently required to retain Material Safety Data Sheets (now known as "Safety Data Sheets"). The proposed regulation seeks to amend this rule to permit licensees to retain these records in electronic format. Owners that choose not to maintain records in an electronic format will not have to change any existing practices to comply with this rule. This should reduce record retention costs for licensees and will not have an adverse impact on jobs and employment opportunities for appearance enhancement practitioners.