

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Food Processing License Exemptions for Maple Syrup and Honey Processors

I.D. No. AAM-13-17-00001-P

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

Proposed Action: This is a consensus rule making to amend section 276.4(a) of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 251-z-4 and 251-z-9

Subject: Food processing license exemptions for maple syrup and honey processors.

Purpose: To allow maple syrup and honey processors to add safe ingredients and remain exempt from licensing.

Text of proposed rule: Subdivision (a) of section 276.4 of 1 NYCRR is amended to read as follows:

(a) Maple syrup and honey. Processors of maple syrup or honey who do not purchase maple syrup or honey from others for repackaging, and who do not combine maple syrup or honey with any other [substance] *ingredients capable of supporting the growth of infectious or toxigenic organisms*, shall be exempt from the licensing requirements of [this Subchapter] *Article 20-C of the Agriculture and Markets Law*, provided that [the following conditions are met:

(1) Such] *such* establishments are maintained in a sanitary condition and manner, and [to this end] the following requirements shall be complied with:

[(i)] (1) Every practicable precaution shall be taken to exclude birds, insects (except those involved in the production of the product), rodents and other vermin and animals from the premises of the operation.

[(ii)] (2) The use of insecticides, rodenticides and other pest control items in such establishments shall be permitted only under such precautions and restrictions as will prevent the contamination of the product.

[(iii)] (3) Rooms, compartments, places, equipment and utensils used for preparing, storing or otherwise handling the product, and all other parts of the operating premises, shall be kept in a clean and sanitary condition.

[(iv)] (4) There shall be no handling or storing of materials which may create insanitary conditions in anyplace or places where the product is prepared, stored or otherwise handled.

[(v)] (5) All equipment and utensils used in processing or handling the product shall be maintained in good repair to assure sanitary conditions in the operation.

[(vi)] (6) All finished product containers must be clean, sanitary and properly labeled in compliance with the requirements of Part 259 of this Title.

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

Consensus Rule Making Determination

The proposed rule will amend subdivision (a) of section 276.4 of 1 NYCRR; that subdivision currently exempts a processor of maple syrup or honey from having to obtain a food processing license, pursuant to Agriculture and Markets Law Article 20-C, if, inter alia, such maple syrup or honey is not combined with any other substance. The proposed rule will amend that subdivision to exempt a processor of maple syrup or honey from such licensing requirement, even if another substance is added thereto, as long as that substance is not capable of supporting the growth of infectious or toxigenic organisms.

The proposed rule is non-controversial. The proposed rule will allow maple syrup or honey processors that are currently exempt from having to obtain food processing licenses to add “safe” substances to those foods and to maintain their exemptions; the proposed rule will, therefore, encourage such processors to “experiment” with new products and determine whether they are commercially viable. The proposed rule will benefit those maple syrup or honey processors that do produce new maple syrup or honey-based products that meet with wide-spread consumer acceptance.

The proposed will not have any adverse impact upon regulated parties but will, rather, allow maple syrup or honey processors to develop new markets for their products; the proposed rule, therefore, is not controversial.

Job Impact Statement

The proposed rule will allow maple syrup and honey processors to add certain substances that are not capable of supporting the growth of infectious or toxigenic organisms to such food and to continue to be exempt from having to obtain food processing licenses. The proposed rule will allow such processors to develop new maple syrup and honey-based products, to determine if there is a market therefor; the proposed rule may, therefore, promote increased trade in such products and could, thereby, result in an increase in job opportunities.

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

Requirements Applicable to Facilities That Manufacture Food for Human Consumption

I.D. No. AAM-13-17-00002-P

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

Proposed Action: This is a consensus rule making to add Part 260, sections 261.1(d) and 261.12 to Title 1 NYCRR.

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

Subject: Requirements applicable to facilities that manufacture food for human consumption.

Purpose: To incorporate by reference 21 CFR part 117, containing such requirements.

Text of proposed rule: Subchapter C of Chapter VI of 1 NYCRR is amended by adding thereto a new Part 260, to read as follows:

PART 260

CURRENT GOOD MANUFACTURING PRACTICE, HAZARD ANALYSIS, AND RISK-BASED PREVENTIVE CONTROLS FOR HUMAN FOOD

260.1 Standards

(a) For the purpose of the enforcement of Article 17 of the Agriculture and Markets Law, the Commissioner of the Department of Agriculture and Markets hereby adopts Part 117 of Title 21 of the Code of Federal Regulations (revised as of April 1, 2016; U.S. Government Printing Office, Washington, D.C. 20402), except that each reference therein to the terms:

(1) "FDA" shall be deemed to be a reference to the Department of Agriculture and Markets;

(2) "FDA District Director and to Director" and to "Director of the Office of Compliance in the Center for Food Safety and Applied Nutrition" shall be deemed to be a reference to the Director of the Division of Food Safety and Inspection of the Department of Agriculture and Markets;

(3) "Secretary" and to "Commissioner of Food and Drugs" shall be deemed to be a reference to the Commissioner of the Department of Agriculture and Markets unless the context clearly indicates that each such term should have the meaning ascribed to it in Title 21 of the Code of Federal Regulations section 117.3.

(b) Notwithstanding the provisions of subdivisions (a) of this section:

(1) The Commissioner of the Department of Agriculture and Markets does not adopt section 117.201 of Subpart D, and does not adopt Subpart E, of Part 117 of Title 21 of the Code of Federal Regulations; and

(2) Part 117 of Title 21 of the Code of Federal Regulations does not apply to a milk plant or transfer station that is an interstate milk shipper listed in the document entitled Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers, published by the U.S. Department of Health and Human Services, unless such listing has been properly withdrawn.

(c) Every term used in this section that is defined or given meaning in Title 21 of the Code of Federal Regulations Part 117 shall be construed as set forth therein.

(d) A copy of Title 21 of the Code of Federal Regulations containing Part 117 is maintained in a file at the Department of Agriculture and Markets, Division of Food Safety and Inspection, 10B Airline Drive, Albany, New York 12235, and at the Department of State, 99 Washington Avenue, Suite 650, Albany, New York 12231, and is available for public inspection and copying during regular business hours.

(e) This section shall take effect on September 1, 2017, except that "small businesses" are not required to comply with Part 117 of Title 21 of the Code of Federal Regulations, as adopted pursuant to and consistent with subdivisions (a) and (b) of this section, until September 18, 2017, and very small businesses and qualified facilities are not required to comply therewith until September 18, 2018.

Section 261.1 of Title One of the Official Compilation of Codes, Rules and Regulations of the State of New York ("1 NYCRR") is amended by adding thereto a new subdivision (d) to read as follows:

(d) "Small business", "very small business", and "qualified facility" each mean the entities so defined in section 117.3 of Title 21 of the Code of Federal Regulations (revised as of April 1, 2016; U.S. Government Printing Office, Washington, D.C. 20402); a copy of that Title containing that section is maintained in a file at the Department of Agriculture and

Markets, Division of Food Safety and Inspection, 10B Airline Drive, Albany, New York 12235, and at the Department of State, 99 Washington Avenue, Suite 650, Albany, New York 12231, and is available for public inspection and copying during regular business hours.

Part 261 of 1 NYCRR is amended by adding thereto a new section 261.12, to read as follows:

§ 261.12 Applicability.

The requirements of this Part are applicable only to:

(a) small businesses, until September 18, 2017; and

(b) very small businesses and qualified facilities, until September 18, 2018.

Text of proposed 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

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

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

Consensus Rule Making Determination

The proposed rule will amend Subchapter C of Chapter VI of 1 NYCRR to add a new Part 260, to be headed "Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food". The proposed rule will incorporate by reference all of the substantive subparts of 21 CFR Part 117 which, generally, require food plants to adhere to requirements designed to ensure that food is safe for human consumption; the proposed rule will not, however, incorporate by reference the procedural requirements set forth in section 117.201 of Subpart D, and in Subpart E, of 21 CFR Part 117.

Upon adoption of the proposed rule, the Department of Agriculture and Markets ("Department") will have the power to regulate only those facilities that are required to comply with the substantive subparts of 21 CFR Part 117, as enforced by the United States Food and Drug Administration ("FDA"). Pursuant to 21 CFR section 117.5, FDA will not require certain facilities to comply with certain substantive subparts of 21 CFR Part 117 (i.e., Subpart C, headed "Hazard Analysis and Risk-Based Preventive Controls", and Subpart G, headed "Supply-Chain Program") and the proposed rule maintains that "exemption"; as such, the proposed rule authorizes the Department to require facilities to comply only with those requirements with which they are currently required to comply.

Based upon the preceding, the Department believes that the proposed rule will not be controversial and will, itself, have no adverse impact upon regulated parties.

Job Impact Statement

The proposed rule will not have an adverse impact upon employment opportunities.

The proposed rule will amend Subchapter C of Chapter VI of 1 NYCRR to add a new Part 260, to be headed "Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food". The proposed rule will incorporate by reference all of the substantive subparts of 21 CFR Part 117 which, generally, require food plants to adhere to requirements designed to ensure that food is safe for human consumption; the proposed rule will not, however, incorporate by reference the procedural requirements set forth in section 117.201 of Subpart D, and in Subpart E, of 21 CFR Part 117.

Upon adoption of the proposed rule, the Department of Agriculture and Markets ("Department") will have the power to regulate only those facilities that are required to comply with the substantive subparts of 21 CFR Part 117, as enforced by the United States Food and Drug Administration ("FDA"). Pursuant to 21 CFR section 117.5, FDA will not require certain facilities to comply with certain substantive subparts of 21 CFR Part 117 (i.e., Subpart C, headed "Hazard Analysis and Risk-Based Preventive Controls", and Subpart G, headed "Supply-Chain Program") and the proposed rule maintains that "exemption"; as such, the proposed rule, when adopted, will authorize the Department to require facilities to comply only with those requirements with which they are currently required to comply.

Based upon the preceding, the Department believes that the proposed rule will have no adverse impact upon jobs.

Education Department

EMERGENCY RULE MAKING

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

I.D. No. EDU-45-16-00005-E

Filing No. 180

Filing Date: 2017-03-13

Effective Date: 2017-03-14

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

Action taken: Amendment of sections 30-3.4 and 30-3.5 of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The Department has over the course of the last year attempted to provide as much flexibility to districts as possible within the parameters of the law to comply with the requirements of the new law. The proposed amendment seeks to provide additional flexibility to the City School District of the City of New York relating to the growth targets for SLOs in the student performance category.

Education Law § 3012-d(4)(a) requires the Commissioner to set parameters for appropriate targets for student growth for both subcomponents of the student performance category, where there is no State-provided growth score. Sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents require districts to calculate scores and ratings for SLOs in accordance with certain minimum percentages prescribed in the regulation. The current regulation provides an exception for teachers with courses with small “n” sizes as defined by the Commissioner in guidance. The same exception applies to principals with buildings or programs with small “n” sizes as defined by the Commissioner in guidance.

The proposed amendment revises sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents to provide further flexibility to allow the City School District of the City of New York to calculate scores and ratings for SLOs pursuant to a methodology approved by the Commissioner in the district’s approved APPR plan.

Since the Board of Regents meets at fixed intervals, 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), at the March 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the March meeting would be March 29, 2017, the date a Notice of Adoption would be published in the State Register. Emergency action is needed at the March 2017 meeting in order to ensure that the emergency rule adopted at the October meeting is in effect until it can be adopted as a permanent rule.

Emergency action is also needed at the March 2017 Regents meeting for the preservation of the general welfare in order to immediately adopt revisions to the proposed amendment to provide additional flexibility for the City School District of the City of New York to calculate scores for student learning objectives pursuant to a methodology approved by the Commissioner in the district’s annual professional performance review plan so that it can be used beginning in the 2016-2017 school year.

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

Purpose: Provide New York City with flexibility in the student performance category for teacher and principal evaluations.

Text of emergency rule: 1. Paragraph (3) of subdivision (c) of section 30-3.4 shall be amended to read as follows:

(3) Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate scores for SLOs in accordance with the minimum percentages prescribed in the table below; provided however that for teachers with

courses with small “n” sizes as defined by the commissioner in guidance, districts shall calculate scores for SLOs using a methodology prescribed by the commissioner in guidance *and for teachers in the City School District of the City of New York, districts shall calculate scores for SLOs using the methodology approved by the commissioner in its APPR plan.* For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

2. Paragraph (3) of subdivision (c) of section 30-3.5 of the Rules of the Board of Regents shall be amended to read as follows:

(3) Each measure used in the student performance category (State provided growth score, SLOs, State-designed supplemental assessments) must result in a score between 0 and 20. The State will generate scores of 0-20 for measures using a State-provided growth score. Districts shall calculate growth scores for SLOs in accordance with the minimum percentages prescribed in the table below; provided however that for principals of a building or program with small “n” sizes as defined by the commissioner in guidance, districts shall calculate scores for SLOs using a methodology prescribed by the commissioner in guidance *and for principals in the City School District of the City of New York, districts shall calculate scores for SLOs using the methodology approved by the commissioner in its APPR plan.* For all other measures that are not State-provided growth measures, scores of 0-20 shall be computed locally in accordance with the State provided or approved growth model used.

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-45-16-00005-EP, Issue of November 9, 2016. The emergency rule will expire May 11, 2017.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

The proposed rule is necessary to provide immediate notice to New York City of the additional flexibility in the student performance category, while they are negotiating their annual professional performance review plan under Education Law § 3012-d for the 2016-2017 school year and thereafter.

3. NEEDS AND BENEFITS:

On April 13, 2015, the Governor signed Chapter 56 of the Laws of 2015 to add a new Education Law § 3012-d, to establish a new evaluation system for classroom teachers and building principals. The Department implemented regulations to implement the new law in June 2015 and has revised those regulations over the course of the last year to provide school districts and BOCES with as much flexibility as possible to comply with the new law. Education Law § 3012-d(12) and the corresponding appropriation language require school districts to comply with the new law in order to receive their State aid increases.¹ The Department has over the course of the last year attempted to provide as much flexibility to districts as possible within the parameters of the law to comply with the requirements of the new law. The proposed amendment seeks to provide additional flexibility to the City School District of the City of New York relating to the growth targets for SLOs in the student performance category.

Education Law § 3012-d(4)(a) requires the Commissioner to set parameters for appropriate targets for student growth for both subcomponents of the student performance category, where there is no State-provided growth score. Sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents require districts to calculate scores and ratings for SLOs in accordance with certain minimum percentages prescribed in the regulation. The current regulation provides an exception for teachers with courses with small “n” sizes as defined by the Commissioner in guidance.

The proposed amendment revises sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents to provide further flexibility to allow the City School District of the City of New York to calculate scores and ratings for SLOs pursuant to a methodology approved by the Commissioner in its APPR plan. The New York City School District is the largest school district in the State of New York and the United States, serving more than 1.1 million students in over 1,800 schools. Given this size, the proposed flexibility is needed to allow the NYCDOE to use a standardized growth model to ensure an objective, consistent, district-level expectation for growth.

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 revises sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents to provide further flexibility to allow the City School District of the City of New York to calculate scores and ratings for SLOs pursuant to a methodology approved by the Commissioner in its APPR plan. The New York City School District is the largest school district in the State of New York and the United States, serving more than 1.1 million students in over 1,800 schools. Given this size, the proposed flexibility is needed to allow the NYCDOE to use a standardized growth model to ensure an objective, consistent, district-level expectation for growth.

6. PAPERWORK:

The proposed amendment does not impose any paperwork requirements.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

The proposed amendment was added in response to concerns raised by the field. No alternatives were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards related to the amendment.

10. COMPLIANCE SCHEDULE:

It is anticipated that the parties will be able to comply by its stated effective date.

¹ The Legislature subsequently extended this deadline until December 31, 2016 (see, Chapter 73 of the Laws of 2016).

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed amendment revises sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents to provide further flexibility to allow the City School District of the City of New York to calculate scores and ratings for SLOs pursuant to a methodology approved by the Commissioner in its APPR plan. The New York City School District is the largest school district in the State of New York and the United States, serving more than 1.1 million students in over 1,800 schools. Given this size, the proposed flexibility is needed to allow the NYCDOE to use a standardized growth model to ensure an objective, consistent, district-level expectation for growth.

The amendment does not impose any new recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and none 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 City School District of the City of New York will be required to comply with the proposed amendment.

2. COMPLIANCE REQUIREMENTS:

On April 13, 2015, the Governor signed Chapter 56 of the Laws of 2015 to add a new Education Law § 3012-d, to establish a new evaluation system for classroom teachers and building principals. The Department implemented regulations to implement the new law in June 2015 and has revised those regulations over the course of the last year to provide school districts and BOCES with as much flexibility as possible to comply with the new law. Education Law § 3012-d(12) and the corresponding appropriation language require school districts to comply with the new law in order to receive their State aid increases.¹ The Department has over the course of the last year attempted to provide as much flexibility to districts as possible within the parameters of the law to comply with the require-

ments of the new law. The proposed amendment seeks to provide additional flexibility to the City School District of the City of New York relating to the growth targets for SLOs in the student performance category.

Education Law § 3012-d(4)(a) requires the Commissioner to set parameters for appropriate targets for student growth for both subcomponents of the student performance category, where there is no State-provided growth score. Sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents require districts to calculate scores and ratings for SLOs in accordance with certain minimum percentages prescribed in the regulation. The current regulation provides an exception for teachers with courses with small "n" sizes as defined by the Commissioner in guidance.

The proposed amendment revises sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents to provide further flexibility to allow the City School District of the City of New York to calculate scores and ratings for SLOs pursuant to a methodology approved by the Commissioner in its APPR plan. The New York City School District is the largest school district in the State of New York and the United States, serving more than 1.1 million students in over 1,800 schools. Given this size, the proposed flexibility is needed to allow the NYCDOE to use a standardized growth model to ensure an objective, consistent, district-level expectation for growth.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

There are no additional costs on local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

No alternatives were considered.

7. LOCAL GOVERNMENT PARTICIPATION:

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

¹ The Legislature subsequently extended this deadline until December 31, 2016 (see, Chapter 73 of the Laws of 2016).

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

This proposed amendment applies to the City School District of the City of New York and does not apply to any rural areas of the State.

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

On April 13, 2015, the Governor signed Chapter 56 of the Laws of 2015 to add a new Education Law § 3012-d, to establish a new evaluation system for classroom teachers and building principals. The Department implemented regulations to implement the new law in June 2015 and has revised those regulations over the course of the last year to provide school districts and BOCES with as much flexibility as possible to comply with the new law. Education Law § 3012-d(12) and the corresponding appropriation language require school districts to comply with the new law in order to receive their State aid increases.¹ The Department has over the course of the last year attempted to provide as much flexibility to districts as possible within the parameters of the law to comply with the requirements of the new law. The proposed amendment seeks to provide additional flexibility to the City School District of the City of New York relating to the growth targets for SLOs in the student performance category.

Education Law § 3012-d(4)(a) requires the Commissioner to set parameters for appropriate targets for student growth for both subcomponents of the student performance category, where there is no State-provided growth score. Sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents require districts to calculate scores and ratings for SLOs in accordance with certain minimum percentages prescribed in the regulation. The current regulation provides an exception for teachers with courses with small "n" sizes as defined by the Commissioner in guidance.

The proposed amendment revises sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents to provide further flexibility to allow the City School District of the City of New York to calculate scores and ratings for SLOs pursuant to a methodology approved by the Commissioner in its APPR plan. The New York City School District is the largest school district in the State of New York and the United States, serving more than 1.1 million students in over 1,800 schools. Given this size, the proposed flexibility is needed to allow the NYCDOE to use a standardized growth model to ensure an objective, consistent, district-level expectation for growth.

3. COSTS:

The proposed amendment does not impose any costs on school districts located in rural areas of the State.

4. MINIMIZING ADVERSE IMPACT:

No alternatives were considered because it does not affect rural areas.

5. RURAL AREA PARTICIPATION:

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

¹ The Legislature subsequently extended this deadline until December 31, 2016 (see, Chapter 73 of the Laws of 2016).

Job Impact Statement

On April 13, 2015, the Governor signed Chapter 56 of the Laws of 2015 to add a new Education Law § 3012-d, to establish a new evaluation system for classroom teachers and building principals. The Department implemented regulations to implement the new law in June 2015 and has revised those regulations over the course of the last year to provide school districts and BOCES with as much flexibility as possible to comply with the new law. Education Law § 3012-d(12) and the corresponding appropriation language require school districts to comply with the new law in order to receive their State aid increases.¹ The Department has over the course of the last year attempted to provide as much flexibility to districts as possible within the parameters of the law to comply with the requirements of the new law. The proposed amendment seeks to provide additional flexibility to the City School District of the City of New York relating to the growth targets for SLOs in the student performance category.

Education Law § 3012-d(4)(a) requires the Commissioner to set parameters for appropriate targets for student growth for both subcomponents of the student performance category, where there is no State-provided growth score. Sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents require districts to calculate scores and ratings for SLOs in accordance with certain minimum percentages prescribed in the regulation. The current regulation provides an exception for teachers with courses with small “n” sizes as defined by the Commissioner in guidance.

The proposed amendment revises sections 30-3.4(c)(3) and 30-3.5(c)(3) of the Rules of the Board of Regents to provide further flexibility to allow the City School District of the City of New York to calculate scores and ratings for SLOs pursuant to a methodology approved by the Commissioner in its APPR plan. The New York City School District is the largest school district in the State of New York and the United States, serving more than 1.1 million students in over 1,800 schools. Given this size, the proposed flexibility is needed to allow the NYCDOE to use a standardized growth model to ensure an objective, consistent, district-level expectation for growth.

Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, 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 since publication of the last assessment of public comment.

¹ The Legislature subsequently extended this deadline until December 31, 2016 (see, Chapter 73 of the Laws of 2016).

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

Dispensing of Post-Exposure Prophylaxis Drugs to Prevent HIV in Persons Who May Have Been Recently Exposed

I.D. No. EDU-13-17-00012-EP

Filing No. 177

Filing Date: 2017-03-13

Effective Date: 2017-03-14

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

Proposed Action: Addition of sections 60.12, 63.13 and 64.5(h) to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6527(7-a), 6801(5), 6902(3) and 6909(8); L. 2016, ch. 502

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

Specific reasons underlying the finding of necessity: The proposed

amendment is necessary to implement Chapter 502 of the Laws of 2016, which became effective on November 28, 2016, the date it was enacted. The amendment to the Education Law made by Chapter 502 of the Laws of 2016 allows licensed pharmacists to execute non-patient specific orders to dispense HIV post-exposure prophylaxis drugs prescribed by a licensed physician or a certified nurse practitioner for the purpose of preventing HIV infection.

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 June 12-13, 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the June meeting, would be June 28, 2017, the date a Notice of Adoption would be published in the State Register. However, the provisions of Chapter 502 of the Laws of 2016 became effective on November 28, 2016.

Therefore, emergency action is necessary at the March 2017 Regents meeting for preservation of the public health and general welfare in order to enable the State Education Department to immediately implement Chapter 502 of the Laws of 2016, to allow licensed pharmacists to dispense drugs pursuant to non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner for the purpose of preventing HIV infection in persons who have potentially been exposed to HIV.

It is anticipated that the proposed amendment will be presented for permanent adoption at the June 12-13, 2017 Regents meeting, which is the first scheduled meeting after the expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Dispensing of post-exposure prophylaxis drugs to prevent HIV in persons who may have been recently exposed.

Purpose: To allow execution by licensed pharmacists of non-patient specific orders to dispense HIV post-exposure prophylaxis drugs.

Text of emergency/proposed rule: 1. Section 60.12 of the Regulations of the Commissioner of Education is added, effective March 14, 2017, to read as follows:

60.12 Orders to dispense drugs to prevent human immunodeficiency virus (HIV) infection.

(1) As used in this section, HIV post-exposure prophylaxis drugs means drugs approved by the Federal Food and Drug Administration to prevent and/or treat HIV infection.

(2) A licensed physician may issue a written non-patient specific order and protocol for a licensed pharmacist to dispense up to a seven day supply of HIV post-exposure prophylaxis drugs to prevent HIV infection in persons who have potentially been exposed to HIV, provided that the requirements of this section are met.

(3) Order and protocol.

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

(a) the name, license number and signature of the licensed physician who issues the non-patient specific order and protocol;

(b) the name and dose of the specific drug(s) to be dispensed;

(c) a protocol for dispensing the drug(s) or a specific reference to a separate written protocol for dispensing the drug(s), which shall meet the requirements of subparagraph (ii) of this paragraph;

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

(e) a description of the group(s) of persons who may receive the dispensed drugs, provided that the group(s) of persons are located in New York State; and

(f) the name and license number of each licensed pharmacist authorized to execute the non-patient specific order and protocol or the name and address of the New York State licensed pharmacy that employs or contracts with the licensed pharmacist(s) to execute the non-patient specific order and protocol.

(ii) The written protocol, incorporated into the order prescribed in subparagraph (i) of this paragraph, shall, at a minimum, require the licensed pharmacist to:

(a) screen each potential recipient, pursuant to criteria in the protocol, for conditions that would qualify or preclude the potential recipient from receiving the dispensed drugs;

(b) offer counseling regarding the need for follow-up care pursuant to criteria in the protocol and provide the counseling if the recipient consents;

(c) offer or provide in writing, the names and addresses of hospitals or other health providers that offer follow-up care, which shall be identified in the protocol; and

(d) document the pharmacy services provided, including the offer or provision of counseling and referral information described in this

subparagraph, and maintain the documentation in accordance with section 29.2(a)(3), section 63.6(b)(7) and section 63.6(b)(8) of this Title.

(4) A licensed physician may issue a written patient specific order or prescription to a licensed pharmacist to dispense HIV post-exposure prophylaxis drugs pursuant to applicable law.

2. Section 63.13 of the Regulations of the Commissioner of Education is added, effective March 14, 2017, to read as follows:

63.13 Non-patient specific orders and protocols.

Orders to dispense drugs to prevent human immunodeficiency virus (HIV) infection. A licensed pharmacist may, pursuant to a non-patient specific order and protocol issued by a licensed physician in accordance with section 60.12 of this Title or by a certified nurse practitioner in accordance with subdivision (h) of section 64.5 of this Title, dispense up to a seven day supply of HIV post-exposure prophylaxis drugs for the purpose of preventing HIV infection in persons who have potentially been exposed to HIV.

3. Subdivision (h) of section 64.5 of the Regulations of the Commissioner of Education is added, effective March 14, 2017, to read as follows:

(h) Orders to dispense drugs to prevent human immunodeficiency virus (HIV) infection.

(1) As used in this subdivision, HIV post-exposure prophylaxis drugs means drugs approved by the Federal Food and Drug Administration to prevent and/or treat HIV infection.

(2) A certified nurse practitioner may issue a written non-patient specific order and protocol for a licensed pharmacist to dispense up to a seven day supply of HIV post-exposure prophylaxis drugs to prevent HIV infection in persons who have potentially been exposed to HIV, provided that the requirements of this subdivision are met.

(3) Order and protocol.

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

(a) the name, license number and signature of the certified nurse practitioner who issues the non-patient specific order and protocol;

(b) the name and dose of the specific drug(s) to be dispensed;

(c) a protocol for dispensing the drug(s) or a specific reference to a separate written protocol for dispensing the drug(s), which shall meet the requirements of subparagraph (ii) of this paragraph;

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

(e) a description of the group(s) of persons who may receive the dispensed drugs, provided that the group(s) of persons are located in New York State; and

(f) the name and license number of each licensed pharmacist authorized to execute the non-patient specific order and protocol or the name and address of the New York State licensed pharmacy that employs or contracts with the licensed pharmacist(s) to execute the non-patient specific order and protocol.

(ii) The written protocol, incorporated into the order prescribed in subparagraph (i) of this paragraph, shall, at a minimum, require the licensed pharmacist to:

(a) screen each potential recipient, pursuant to criteria in the protocol, for conditions that would qualify or preclude the potential recipient from receiving the dispensed drugs;

(b) offer counseling regarding the need for follow-up care pursuant to criteria in the protocol and provide the counseling if the recipient consents;

(c) offer or provide in writing, the names and addresses of hospitals or other health providers that offer follow-up care, which shall be identified in the protocol; and

(d) document the pharmacy services provided, including the offer or provision of counseling and referral information described in this subparagraph, and maintain the documentation in accordance with section 29.2(a)(3), section 63.6(b)(7) and section 63.6(b)(8) of this Title.

(4) A certified nurse practitioner may issue a written patient specific order or prescription to a licensed pharmacist to dispense HIV post-exposure prophylaxis drugs pursuant to applicable law.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire June 10, 2017.

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

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, State Education Building 2M, 89 Washington Ave., Albany, NY 12234, (518) 486-1765, email: opdepcom@nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

Subdivision (7-a) of section 6527 of the Education Law, as added by Chapter 502 of the Laws of 2016, authorizes a licensed physician to prescribe and order a patient specific order or a non-patient specific order to a licensed pharmacist to dispense up to a seven day supply of HIV post-exposure prophylaxis to prevent HIV infection following a potential HIV exposure.

Subdivision (5) of section 6801 of the Education Law, as added by Chapter 502 of the Laws of 2016, authorizes a licensed pharmacist to dispense up to a seven day supply of HIV post-exposure prophylaxis medications for the purpose of preventing HIV infection following a potential HIV exposure, pursuant to a non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner.

Subdivision (3) of section 6902 of the Education law defines the practice of the profession of registered professional nursing by a certified nurse practitioner.

Subdivision (8) of section 6909 of the Education Law, as added by Chapter 502 of the Laws of 2016, authorizes a certified nurse practitioner to prescribe a patient specific order or a non-patient specific order to a licensed pharmacist to dispense up to a seven day supply of HIV post-exposure prophylaxis to prevent HIV infection following a potential HIV exposure.

2. LEGISLATIVE OBJECTIVES:

The proposed rule carries out the intent of the aforementioned statutes that the Department shall supervise the regulation of the practice of the professions for the benefit of the public. The proposed rule will conform the Regulations of the Commissioner to Chapter 502 of the Laws of 2016. Subdivision (7-a) of section 6527, subdivision (5) of section 6801, and subdivision (8) of section 6909 of the Education Law, as added by Chapter 502 of the Laws of 2016, are intended to prevent new HIV infections by making HIV post-exposure prophylaxis drugs more readily available to persons who may have been recently exposed to HIV. According to the United States Centers for Disease Control (CDC), HIV infection remains a major public health problem throughout the United States. The CDC currently recommends that HIV post-exposure prophylaxis drugs be used after a high risk event and must be started as soon as possible to be effective, always within 72 hours after a possible HIV exposure. In the United States, persons are most commonly exposed to HIV through sexual contact or sharing of needles.

3. NEEDS AND BENEFITS:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 502 of the Laws of 2016. The purpose of the proposed rule is to establish criteria for licensed pharmacists to follow when dispensing up to a seven day supply of drugs to prevent HIV infection in a person who may have been exposed to HIV, pursuant to non-patient specific orders and protocols prescribed by a licensed physician or certified nurse practitioner. Specifically, the proposed rule establishes requirements for the type of information that must be included in the non-patient specific order and protocol for a licensed pharmacist to follow when dispensing HIV prophylaxis drugs to persons who may have recently been exposed to HIV.

4. COSTS:

(a) Costs to State government: There are no additional costs to state government.

(b) Costs to local government: There are no additional costs to local government.

(c) Cost to private regulated parties. There are no mandatory costs to private regulated parties.

(d) Cost to the regulatory agency: There are no additional costs to the Department.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed rule does not impose any paperwork mandates because it does not require any licensed physician or certified nurse practitioner to prescribe any non-patient specific orders and protocols and does not require licensed pharmacists to execute any non-patient specific orders and protocols. The proposed rule does not impose any reporting, record-

keeping or other requirements on licensed physicians and certified nurse practitioners unless they choose to prescribe non-patient specific orders and protocols to permit licensed pharmacists to dispense up to a seven day supply of drugs to prevent HIV infection in persons who may have been exposed to HIV. If the licensed physicians and certified nurse practitioners choose to prescribe such non-patient specific orders and protocols, the proposed rule requires them to, *inter alia*, issue these orders and protocols in writing. In addition, licensed pharmacists must document the pharmacy services provided, including the offer or provision of counseling and referral information.

7. DUPLICATION:

There is no other state or federal requirements on the subject matter of the proposed rule. Therefore, the amendment does not duplicate other existing state or federal requirements, and is necessary to implement Chapter 502 of the Laws of 2016.

8. ALTERNATIVES:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 502 of the Laws of 2016. There are no significant alternatives to the proposed rule and none were considered.

9. FEDERAL STANDARDS:

Since there are no applicable federal standards for authorizing licensed pharmacists to dispense up to a seven day supply of drugs to prevent HIV infection in persons who may have been exposed to HIV, pursuant to a non-patient specific order prescribed by a licensed physician or certified nurse practitioner, the proposed rule does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 502 of the Laws of 2016. The proposed rule will become effective on March 14, 2017. The proposed rule does not impose any compliance schedules on regulated parties or local governments.

Regulatory Flexibility Analysis

The purpose of the proposed rule is to conform the Commissioner's Regulations to Chapter 502 of the Laws of 2016, which authorizes licensed pharmacists to execute non-patient specific orders prescribed by a licensed physician or certified nurse practitioner to dispense drugs to prevent HIV infection in persons who may have recently been exposed to HIV. The proposed rule establishes the types of information that must be set forth in written non-patient specific orders and protocols for the licensed pharmacist to follow when dispensing drugs to prevent HIV infection in a person who may have recently been exposed to HIV. The proposed rule neither requires licensed physicians or certified nurse practitioners to issue non-patient specific orders to authorize licensed pharmacists to dispense drugs to prevent HIV infection in persons who may have recently been exposed to HIV, nor does it require licensed pharmacists to dispense such drugs.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all New York State licensed pharmacists who dispense drugs, pursuant to non-patient specific orders issued by licensed physicians or certified nurse practitioners, to prevent HIV infection in persons who may have been exposed to HIV, including those who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 24,160 licensed pharmacists who are registered to practice in New York State, approximately 2,970 reported that their permanent address of record is in a rural county of New York State. Likewise, of the 5,410 registered pharmacies in New York State, approximately 780 are in rural counties.

The proposed rule applies to all New York State certified nurse practitioners who issue non-patient specific orders and protocols to authorize licensed pharmacists to dispense drugs to prevent HIV infection in persons who may have been exposed to HIV, including certified nurse practitioners who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 22,000 certified nurse practitioners who are registered to practice in New York State, approximately 2,800 reported that their permanent address of record is in a rural county of New York State.

Additionally, the proposed rule applies to all New York State licensed physicians who issue non-patient specific orders and protocols to autho-

ize licensed pharmacists to dispense drugs to prevent HIV infection in persons who may have been exposed to HIV, including licensed physicians who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 94,000 licensed physicians who are registered to practice in New York State, approximately 2,600 reported that their permanent address of record is in a rural county of New York State.

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

The proposed rule adds sections 60.12 and 63.13 and subdivision (h) of section 64.5 to the Regulations of the Commissioner of Education to implement Chapter 502 of the Laws of 2016, which became effective on November 28, 2016. Chapter 502 of the Laws of 2016 authorizes licensed pharmacists to dispense drugs, pursuant to a non-patient specific order and protocol prescribed by a licensed physician or certified nurse practitioner, to prevent HIV infection in persons who may have been exposed to HIV.

The proposed rule authorizes, but does not require, any certified nurse practitioner or licensed physician to prescribe patient specific and non-patient specific orders and protocols. In addition, it authorizes, but does not require, licensed pharmacists to execute non-patient specific orders to dispense drugs to prevent HIV infection in persons who may have been exposed to HIV. The proposed rule does not impose any reporting, recordkeeping, other compliance requirements, or professional services requirements on health care providers in rural areas unless a licensed physician or certified nurse practitioner issues a non-patient specific order and protocol for licensed pharmacists to dispense drugs to prevent HIV infection in persons who may have been exposed to HIV. In such cases, the proposed rule requires the licensed physician or certified nurse practitioner to issue the non-patient specific orders and protocols in writing. In addition, licensed pharmacists must document the pharmacy services provided, including the offer or provision of counseling and referral information.

3. COSTS:

The proposed rule will not impose any additional costs on any licensed physician, certified nurse practitioner, licensed pharmacist or other party. Neither subdivision (7-a) of section 6527, subdivision (5) of section 6801, nor subdivision (8) of section 6909 of the Education Law impose any obligations on licensed physicians or certified nurse practitioners to issue any patient specific or non-patient specific orders and protocols. Likewise, Chapter 502 of the Laws of 2016 authorizes, but does not require, licensed pharmacists to dispense drugs to prevent HIV infection in persons who may have been exposed to HIV, pursuant to non-patient specific orders and protocols.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to conform the Commissioner's Regulations with Education Law sections 6527, 6801 and 6909 as amended by Chapter 502 of the Laws of 2016 relating to the execution by licensed pharmacists of non-patient specific orders to dispense drugs to prevent HIV infection in a person who may have been exposed to HIV. Chapter 502 of the Laws of 2016 does not make exceptions for individuals who live or work in rural areas. Thus, the Department has determined that the proposed rule's requirements shall apply to all licensed physicians, certified nurse practitioners and licensed pharmacists in New York State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREAS PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing all parties having an interest in the practice of licensed physicians, certified nurse practitioners, and licensed pharmacists and pharmacies. These organizations included the New York State Department of Health and professional associations representing the pharmacy, nursing and medical professions. These groups have members who live or work in rural areas.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory provisions of Chapter 502 of the Laws of 2016 and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16 of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed rule conforms the Commissioner's Regulations to Chapter 502 of the Laws of 2016, which authorizes licensed pharmacists

to execute non-patient specific orders to dispense up to a seven day supply of drugs to prevent HIV infection in persons who may have been exposed to HIV. The proposed rule establishes criteria for licensed pharmacists to follow when dispensing up to a seven day supply of drugs to prevent HIV infection in a person who may have been exposed to HIV, pursuant to non-patient specific orders and protocols prescribed by a licensed physician or certified nurse practitioner.

The proposed rule implements specific statutory provisions. The proposed rule will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule, which implements specific statutory provisions, that it will not affect job and employment opportunities or only have a positive impact, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

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

Screening of Individuals at Increased Risk of Syphilis, Gonorrhea and Chlamydia (Sexually Transmitted Infections or STIs)

I.D. No. EDU-13-17-00013-EP

Filing No. 178

Filing Date: 2017-03-13

Effective Date: 2017-03-14

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

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

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6527(6)(g), 6902(1) and 6909(4)(g); L. 2016, ch. 502

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Chapter 502 of the Laws of 2016, which became effective on November 28, 2016, the date it was enacted. The amendment to the Education Law made by Chapter 502 of the Laws of 2016 allows registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections pursuant to non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner.

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 June 12-13, 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the June meeting, would be June 28, 2017, the date a Notice of Adoption would be published in the State Register. However, the provisions of Chapter 502 of the Laws of 2016 became effective on November 28, 2016.

Therefore, emergency action is necessary at the March 2017 Regents meeting for preservation of the public health and general welfare in order to enable the State Education Department to immediately implement Chapter 502 of the Laws of 2016, so that registered professional nurses can perform more effective screening of individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections pursuant to non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner in order to prevent potential complications due to these infections, which could include, but are not limited to, possible infertility and the spread of these infections to other persons.

It is anticipated that the proposed amendment will be presented for permanent adoption at the June 12-13, 2017 Regents meeting, which is the first scheduled meeting after the expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Screening of individuals at increased risk of syphilis, gonorrhea and chlamydia (sexually transmitted infections or STIs).

Purpose: To allow execution by registered professional nurses of non-patient specific orders to screen persons at increased risk of STIs.

Text of emergency/proposed rule: Section 64.7 of the Regulations of the Commissioner of Education is amended, effective March 14, 2017, as follows:

64.7 Administration of immunizations, emergency treatment of anaphylaxis, tuberculosis tests, human immunodeficiency virus (HIV) tests, opioid related overdose treatments, [and] hepatitis C tests and screening for syphilis, gonorrhea and/or chlamydia infections pursuant to non-patient specific orders and protocols.

- (a) . . .
- (b) . . .
- (c) . . .
- (d) . . .
- (e) . . .
- (f) . . .

(g) Screening for syphilis, gonorrhea and/or chlamydia infections.

(1) As used in this subdivision, screening means an assessment of an individual to ascertain his or her risk of having a syphilis, gonorrhea and/or chlamydia infection and may include the administration of one or more laboratory or point of care tests approved by the Federal Food and Drug Administration to detect or screen for syphilis, gonorrhea and/or chlamydia infections.

(2) A registered professional nurse may screen persons at increased risk for syphilis, gonorrhea and/or chlamydia pursuant to a written non-patient specific order and protocol prescribed or ordered by a licensed physician or a certified nurse practitioner, provided that the requirements of this subdivision are met.

(3) Order and protocol.

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

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

(b) the name of the specific laboratory or point of care test(s) or assessment procedures to be administered;

(c) a protocol for administering the ordered screening for syphilis, gonorrhea and/or chlamydia infections or a specific reference to a separate written protocol for administering the ordered screening for syphilis, gonorrhea and/or chlamydia, which shall meet the requirements of subparagraph (ii) of this paragraph;

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

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

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

(ii) The written protocol, incorporated into the order prescribed in subparagraph (i) of this paragraph, shall, at a minimum, include instructions for screening for syphilis, gonorrhea and/or chlamydia infections and require the registered professional nurse(s) to ensure that:

(a) each potential recipient is assessed, pursuant to criteria in the protocol, for conditions that would qualify or preclude him or her from receiving the ordered screening tests for syphilis, gonorrhea and/or chlamydia infections;

(b) informed consent for administering the ordered screening for syphilis, gonorrhea and/or chlamydia has been obtained from the recipient pursuant to the criteria in the protocol, or when the recipient lacks capacity to consent, from a person authorized pursuant to law to consent to health care for the recipient;

(c) positive test results for syphilis, gonorrhea and/or chlamydia infections are not disclosed to the test recipient or the recipient's authorized representative by the registered professional nurse without a patient specific order from a licensed physician, licensed physician assistant or certified nurse practitioner; and

(d) the administration of the ordered screening for syphilis, gonorrhea and/or chlamydia is documented in the recipient's medical record in accordance with criteria in the protocol and that documentation relating to the screening for syphilis, gonorrhea and/or chlamydia is maintained in accordance with section 29.2(a)(3) of this Title.

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 June 10, 2017.

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

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, State Education Building 2M, 89 Washington Ave., Albany, NY 12234, (518) 486-1765, email: opdepcom@nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

Paragraph (g) of subdivision (6) of section 6527 of the Education Law, as added by Chapter 502 of the Laws of 2016, authorizes registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections pursuant to a non-patient specific order and protocol prescribed by a licensed physician in accordance with the Regulations of the Commissioner of Education.

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

Paragraph (g) of subdivision (4) of section 6909 of the Education Law, as added by Chapter 502 of the Laws of 2016, authorizes registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections pursuant to a non-patient specific order and protocol prescribed by a certified nurse practitioner in accordance with the Regulations of the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed rule carries out the intent of the aforementioned statutes that the Department shall supervise the regulation of the practice of the professions for the benefit of the public. The proposed rule will conform the Regulations of the Commissioner to Chapter 502 of the Laws of 2016. Paragraph (g) of subdivision (6) of section 6527 of the Education Law and paragraph (g) of subdivision (4) of section 6909 of the Education Law, as added by Chapter 502 of the Laws of 2016, were enacted to protect the public health of New York State by facilitating much needed screening of individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. According to the United States Centers for Disease Control (CDC), sexually transmitted infections (STIs) such as syphilis, gonorrhea and/or chlamydia are a major public health problem throughout the United States. Because syphilis, gonorrhea and/or chlamydia infections are frequently asymptomatic, persons are often unaware that they are infected and require medical treatment. Earlier treatment prevents complications from these infections, including, but not limited to, infertility and prevents further spread of these infections. The CDC recommends screening individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections to identify and treat infected persons before they develop complications and to identify test and treat their sex partners to prevent transmission and reinfections.

3. NEEDS AND BENEFITS:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 502 of the Laws of 2016. The purpose of the proposed rule is to establish uniform requirements for registered professional nurses to meet when executing non-patient specific orders to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. Specifically, the proposed rule establishes the requirements for the type of information that must be included in the non-patient specific orders and protocols for a registered professional nurse to follow when screening individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. The proposed rule is needed to implement paragraph (g) of subdivision (6) of section 6527 of the Education Law and paragraph (g) of subdivision (4) of section 6909 of the Education Law, as added by Chapter 502 of the Laws of 2016.

4. COSTS:

(a) Costs to State government: There are no additional costs to state government.

(b) Costs to local government: There are no additional costs to local government.

(c) Cost to private regulated parties. There are no mandatory costs to private regulated parties.

(d) Cost to the regulatory agency: There are no additional costs to the Department.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed rule does not impose any paperwork mandates because it does not require any licensed physician or certified nurse practitioner to prescribe any non-patient specific orders and protocols and does not require registered professional nurses to execute any non-patient specific orders and protocols. The proposed rule does not impose any reporting, record keeping or other requirements on licensed physicians and certified nurse practitioners unless they choose to prescribe non-patient specific orders and protocols to permit registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. If the licensed physicians and/or certified nurse practitioners choose to prescribe such non-patient specific orders and protocols, the proposed rule requires them to, *inter alia*, issue these orders and protocols in writing. In addition, registered professional nurses must document the screening services provided to each patient in the patient's medical records.

7. DUPLICATION:

There are no other state or federal requirements on the subject matter of the proposed rule. Therefore, the amendment does not duplicate other existing state or federal requirements, and is necessary to implement Chapter 502 of the Laws of 2016.

8. ALTERNATIVES:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 502 of the Laws of 2016. There are no significant alternatives to the proposed rule and none were considered.

9. FEDERAL STANDARDS:

Since, there are no applicable federal standards for authorizing registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections pursuant to a non-patient specific order prescribed by a licensed physician or a certified nurse practitioner, the proposed rule does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed rule is necessary to conform the Regulations of the Commissioner of Education to Chapter 502 of the Laws of 2016. Consistent with the statute, licensed physicians or certified nurse practitioners may, but are not required to, prescribe non-patient specific orders and protocols. Likewise, the rule authorizes, but does not require, registered professional nurses to execute non-patient specific orders and protocols. It is anticipated that the regulated parties, licensed physicians and certified nurse practitioners, who choose to issue these non-patient specific orders and the registered nurses, who choose to execute such orders, will be able to comply with the proposed amendments by the effective.

Regulatory Flexibility Analysis

The purpose of the proposed rule is to conform the Commissioner's Regulations to Chapter 502 of the Laws of 2016, which authorizes registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or certified nurse practitioner to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. The proposed rule establishes requirements for the non-patient specific orders and the types of information that must be set forth in the written protocols for the registered professional nurse to follow when screening individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. The proposed rule neither requires licensed physicians or certified nurse practitioners to issue non-patient specific orders to authorize registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections nor does it require registered professional nurses to perform such screening pursuant to such orders.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all New York State registered professional nurses who screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections pursuant to non-patient specific orders issued by licensed physicians or certified nurse practitioners, including those who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 290,000 registered professional nurses who are registered to practice in New York State, approximately 31,000 reported that their permanent address of record is in a rural county of New York State.

The proposed rule applies to all New York State certified nurse practitioners who issue non-patient specific orders and protocols to authorize registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections, including nurse practitioners who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 22,000 certified nurse practitioners who are registered to practice in New York State, approximately 2,800 reported that their permanent address of record is in a rural county of New York State.

Additionally, the proposed rule applies to all New York State licensed physicians who issue non-patient specific orders and protocols to authorize registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections, including physicians who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 94,000 licensed physicians who are registered to practice in New York State, approximately 2,600 reported that their permanent address of record is in a rural county of New York State.

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

The proposed rule adds subdivision (g) to section 64.7 of the Regulations of the Commissioner of Education, which implements Chapter 502 of the Laws of 2016. This law became effective on November 28, 2016. It authorizes registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea or chlamydia infections pursuant to a non-patient specific order and protocol prescribed by a licensed physician or certified nurse practitioner.

The proposed rule authorizes, but does not require, any certified nurse practitioner or licensed physician to prescribe non-patient specific orders and protocols. In addition, the rule authorizes, but does not require, registered professional nurses to execute non-patient specific orders to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. The proposed rule does not impose any reporting, record keeping, other compliance requirements, or professional services requirements on health care providers in rural areas unless a licensed physician or certified nurse practitioner issues a non-patient specific order and protocol for registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. In such cases, the proposed rule requires the licensed physician or certified nurse practitioner to issue the non-patient specific orders and protocols in writing. In addition, registered professional nurses must document in the patient's medical records that they performed the ordered screening services.

3. COSTS:

The proposed rule will not impose any additional costs on any licensed physician, certified nurse practitioner, registered professional nurse or other party. Neither paragraph (g) of subdivision (4) of section 6909 nor paragraph (g) of subdivision (6) of section 6527 of the Education Law impose any obligations on licensed physicians or certified nurse practitioners to issue non-patient specific orders and protocols to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to conform the Commissioner's Regulations with Education Law sections 6527 and 6909 as amended by Chapter 502 of the Laws of 2016 relating to the execution by registered professional nurses of non-patient specific orders to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. These statutory provisions do not make exceptions for individuals who live or work in rural areas. Thus, the Department has determined that the proposed rule's requirements shall apply to all physicians, certified nurse practitioners and registered professional nurses in New York State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory provisions of Chapter 502 of the Laws of 2016 and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a

further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16 of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed rule conforms the Commissioner's Regulations to Chapter 502 of the Laws of 2016, which authorizes registered professional nurses to execute non-patient specific orders to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections. The proposed rule establishes criteria for registered professional nurses to follow when screening individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections pursuant to non-patient specific orders and protocols prescribed by a licensed physician or certified nurse practitioner.

The proposed rule implements specific statutory provisions. The proposed rule neither requires licensed physicians or certified nurse practitioners to issue non-patient specific orders to authorize registered professional nurses to screen individuals at increased risk of syphilis, gonorrhea and/or chlamydia infections nor does it require registered professional nurses to perform such screening pursuant to such orders. The proposed rule will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule, which implements specific statutory provisions, that it will not affect job and employment opportunities or only have a positive impact, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. EDU-13-17-00014-EP

Filing No. 183

Filing Date: 2017-03-13

Effective Date: 2017-03-14

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

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

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

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

Specific reasons underlying the finding of necessity: As a result of feedback the Board of Regents received from public forums across the State and based upon recommendations from the edTPA Task Force, the proposed amendment eliminates the requirement to take and pass the Academic Literacy Skills Test in order to obtain an initial teaching certificate.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 202(1) and (5), is the July 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the July 2017 Regents meeting is August 2, 2017, the date a Notice of Adoption would be published in the State Register. However, emergency action is needed to protect the general welfare by ensuring that candidates applying for an initial teaching certificate are aware that they will no longer be required to take and pass the ALST to obtain certification, and therefore will not have to pay a fee for the examination.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the July 2017 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.

Subject: 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 of emergency/proposed rule: 1. Subdivision (c) of section 80-1.5 of the Regulations of the Commissioner of Education shall be amended to read as follows:

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

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

(i) receive a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment and prior to [June 30, 2017] *either the date a new passing score for the edTPA is approved by the Commissioner after a recommendation is made by a new standard setting panel or June 30, 2018, whichever is earlier;* or

(ii) pass the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective), provided the candidate has taken and failed the teacher performance assessment prior to [June 30, 2017] *either the date a new passing score for the edTPA is approved by the Commissioner after a recommendation is made by a new standard setting panel, or June 30, 2018, whichever is earlier.*

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

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

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

(3) Content specialty test.

- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .

2. Subparagraph (iii) of paragraphs (1) of subdivision (c) of section 80-3.4 of the Regulations of the Commissioner of Education shall be repealed.

3. Subparagraph (iii) of paragraphs (2) of subdivision (c) of section 80-3.4 of the Regulations of the Commissioner of Education shall be repealed.

4. Clause (a) of subparagraph (i) of paragraph (3) of subdivision (b) of section 80-3.4 of the Regulations of the Commissioner of Education shall be repealed and clause (b) of subparagraph (i) of paragraph (3) of subdivision (b) of section 80-3.4 of the Regulations of the Commissioner of Education shall be renumbered as clause (a) of subparagraph (i) of paragraph (3) of subdivision (b) of section 80-3.4 of the Regulations of the Commissioner of Education.

5. Subparagraph (ii) of paragraph (2) of subdivision (a) of section 80-5.22 of the Regulations of the Commissioner of Education shall be repealed and subparagraph (iii) shall be renumbered as subparagraph (ii) of paragraph (2) of subdivision (a) of section 80-5.22 of the Regulations of the Commissioner of Education.

6. Sections 80-5.10 and 80-5.11 of the Regulations of the Commissioner of Education shall be repealed.

7. Paragraph (3) of subdivision (b) of section 80-3.9 of the Regulations of the Commissioner of Education shall be repealed and paragraph (4) shall be renumbered as paragraph (3) of subdivision (b) of section 80-3.9 of the Regulations of the Commissioner of Education.

8. Paragraph (2) of subdivision (b) of section 80-5.14 of the Regulations of the Commissioner of Education shall be amended, to read as follows:

(2) Examination.

(i) [A candidate who applies for a Transitional C certificate on or before April 30, 2014 and who has completed all other requirements for a Transitional C certificate on or before April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test, and content specialty test(s) in the area of the certificate on or before April 30, 2014, or a satisfactory level of performance on the academic literacy skills test, the educating all students test and the content specialty test(s) in the area of the certificate.

(ii) Candidates who apply for a Transitional C certificate on or after May 1, 2014 or who apply for a Transitional C certificate on or before April 30, 2014 but do not meet all the requirements for an initial certificate on or before April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the [academic literacy skills test, the] educating all students test and the content specialty test.

9. Subparagraph (i) of paragraph (2) of subdivision (b) of section 80-3.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(i)

(a) [Except as otherwise provided in this subdivision, for candidates who have completed all requirements for initial certification on or before April 30, 2014 and who apply for certification on or before April 30, 2014, the candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test, written assessment of teaching skills, and content specialty test(s) in the area of the certificate on or before April 30, 2014, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test. Instead of meeting the examination requirements of this subdivision, a candidate applying for certification on or before April 30, 2014 may achieve a satisfactory level of performance on the set of certification examinations described in this subdivision, except that such candidate may receive a satisfactory level of performance on either the teacher performance assessment or the written assessment of teaching skills.

(b) Except as otherwise provided in this section, for 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, such candidates shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination teacher performance assessment, the educating all students test, [the academic literacy skills test] and the content specialty test(s) in the area of the certificate, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test or the teacher performance assessment and a candidate seeking an initial certificate in the title of Educational Technology Specialist (all grades) shall not be required to achieve a satisfactory level of performance on the teacher performance assessment.

[(c)] (b) Examination requirement for candidates with a graduate degree in science, technology, engineering or mathematics and two years of post-secondary teaching experience in the area of the certificate sought.

(1) [Any candidate seeking an initial certificate in earth science, biology, chemistry, physics, mathematics or in a closely related field as determined by the department in (grades 7-12) and who is applying for an initial certificate through individual evaluation under section 80-3.7(a)(3)(ii)(c) of this Subpart on or before April 30, 2014 and who has completed all other requirements for initial certification under such section on or before April 30, 2014 shall only be required to achieve a satisfactory level of performance on the liberal arts and sciences test.

(2) Any candidate seeking an initial certificate in earth science, biology, chemistry, physics, mathematics or in a closely related field as determined by the department in (grades 7-12) and who is applying for an initial certificate through individual evaluation under section 80-3.7(a)(3)(ii)(c) of this Subpart 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 through individual evaluation on or before April 30, 2014, shall only be required to achieve a satisfactory level of performance on the educating all students test [and the academic literacy skills test].

10. Subparagraph (ii) of paragraph (2) of subdivision (a) of section 80-5.13 of the Regulations of the Commissioner of Education, shall be amended, to read as follows:

(ii) Examination.

(a) [A candidate who applies for a Transitional B certificate on or before April 30, 2014 and who meets all the requirements for a Transitional B certificate on or before April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the New York State teacher certification examination liberal arts and sciences test, and the content specialty test(s) in the area of the certificate, where such content specialty test is required for the certificate title on or before April 30, 2014. Successful completion of the content specialty test in the area of the certificate shall not be required for the transitional B certificate authorizing the teaching of English to speakers of other languages, students with disabilities, students who are deaf or hard-of-hearing, students who are blind or visually impaired, or students with speech and language disabilities, or for an extension of a transitional B certificate in

bilingual education. Instead, the candidate shall submit evidence of having achieved a satisfactory level of performance on a New York State teacher certification examination content specialty test prescribed by the Commissioner.

(b) A candidate who applies for a Transitional B certificate on or after May 1, 2014 or a candidate who applies for a Transitional B certificate on or before April 30, 2014 but does not meet all the requirements for a Transitional B certificate on April 30, 2014 shall submit evidence of having achieved a satisfactory level of performance on the New York State teacher certification examination [academic literacy skills test,] the [education for] *educating* all students test and the content specialty test(s) in the area of the certificate, where such content specialty test is required for the certificate title. Successful completion of the content specialty test in the area of the certificate shall not be required for the [transitional B] *Transitional B* certificate authorizing the teaching of English to speakers of other languages, students with disabilities, students who are deaf or hard-of-hearing, students who are blind or visually impaired, or students with speech and language disabilities, or for an extension of a Transitional B certificate in bilingual education. Instead, the candidate shall submit evidence of having achieved a satisfactory level of performance on a New York State teacher certification examination content specialty test prescribed by the Commissioner or a teaching certificate in the classroom teaching service.

11. Subparagraph (ii) of paragraph (1) of subdivision (b) of section 80-5.13 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on [the New York State teacher certification examination written assessment of teaching skills test, and] any [other] examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable.

[(a) A candidate who applies for an initial certificate on or before April 30, 2014, and who has completed all other requirements for an initial certificate or who has completed all requirements for an initial certificate except completion of their registered Transitional B program, on or before April 30, 2014 shall submit evidence of having achieved a satisfactory level of performance on the New York State teacher certification examination written assessment of teaching skills test, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable, on or before April 30, 2014 or a satisfactory level of performance on the teacher performance assessment, if applicable for that certificate title, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable.

(b) A candidate who applies for an initial certificate on or after May 1, 2014 or who applies for an initial certificate on or before April 30, 2014 but does not meet all the requirements for an initial certificate on April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the teacher performance assessment, if applicable for that certificate title, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable.]

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 June 10, 2017.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Department, 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, 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.

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.

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

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

Education Law 3004(1) authorizes the Commissioner to promulgate

regulations governing the certification requirements for teachers employed in public schools.

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

2. LEGISLATIVE OBJECTIVES:

The proposed emergency rule is necessary to implement recommendations from the edTPA Task Force, which was reconvened at the request of the Board of Regents, to eliminate the Academic Literacy Skills Test (ALST) for teacher certification, revise the Educating All Students Test (EAS) and make potential changes to the passing score for the edTPA.

3. NEEDS AND BENEFITS:

New and revised teacher certifications exams were released to the field in May 2014.

Description of the Currently Required Certification Examinations

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

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

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

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

Ongoing Review of Teacher Certification Examinations

The edTPA Task Force was reconvened by request of the members of the Board of Regents in January 2016. Beginning in May 2016, the Task Force began to review the edTPA, as well as other teacher certification exams. Conversations were led by co-chairs, Dr. David Cantaffa (Assistant Provost for Educator Preparation, SUNY) and Dr. Jamie Dangler (Vice President for Academics, UUP). This work was also informed by the gathering of information across the State of New York by the Higher Education Committee chairs, Regents Cashin and Collins. Several other members of the NYS Board of Regents and the NYS Commissioner of Education participated in public forums over the past year to discuss the teacher certification exams.

At the January 2017 Board of Regents meeting, the co-chairs of the Task Force presented the Board with their proposed recommendations. See Appendix A for the full report of the Task Force. One of the recommendations from the Task Force was to eliminate the requirement to take and pass the ALST (or use the safety net, which is in place until June 30, 2017) for teacher certification.

Proposed Regulation

As a result of feedback from the public forums and the edTPA Task Force, as well as meetings with deans of many education preparation programs, and the recommendations of the edTPA Task Force, the Department recommends that candidates for teacher certification no longer be required to take and pass the Academic Literacy Skills Test (ALST) in order to obtain an initial teaching certificate. Concerns about the assessment that were expressed by the Task Force and the deans included the cost, the need for the assessment in light of the other certification examinations, and the total number of exams required for teacher certification.

In lieu of this assessment, the Department will work with the testing vendor to make modifications to the EAS exam to eliminate the current short-answer constructed response items and replace them with reading and writing item(s) which will assess both students' ability to teach a diverse population and also their literacy skills. As a result, the Department will extend the safety net for the EAS until the revised EAS becomes operational.

The Department is also proposing technical amendments to eliminate any references to the Liberal Arts and Sciences Test which is no longer administered as a teacher certification examination. The proposed amendment also makes technical amendments to eliminate regulations relating to modified licenses and certificates of qualification because these certificates and licensure titles no longer exist.

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, ser-

vice, duty or responsibility upon any local government, school districts or BOCES.

6. PAPERWORK:

The amendment does not require any additional paperwork requirements upon state or local government, the State Education Department, school districts, BOCES, or teacher certification candidates. In fact, it will reduce paperwork, as the safety net for the ALST (which is an attestation and transcript submitted by candidates) will no longer be necessary.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

The amendment was proposed in response to concerns raised in the field as well as in response to the outcome of the work of the edTPA Task Force. The amendment applies equally to all candidates pursuing teacher certification in New York State.

9. FEDERAL STANDARDS:

There are no applicable Federal standards related to the amendment.

10. COMPLIANCE SCHEDULE:

The proposed emergency amendment will be presented for emergency adoption at the March 2017 Board of Regents meeting, and will be effective as an emergency rule on March 14, 2017. It is anticipated that the proposed emergency amendment will be adopted as a permanent rule at the July 2017 Board of Regents meeting, and will become effective as a permanent rule on August 2, 2017.

Regulatory Flexibility Analysis

The purpose of the proposed emergency amendment is to address concerns raised by the field, and to implement recommendations from the edTPA Task Force, which included the elimination of the Academic Literacy Skills Test (ALST), the establishment of a new passing score for the edTPA and potential revisions to the Educating all Student ("EAS") test.

The Department is also proposing technical amendments to eliminate any references to the Liberal Arts and Sciences Test, which is no longer administered as a teacher certification examination. The proposed amendment also makes technical amendments to eliminate regulations relating to modified licenses and certificates of qualification because these certificates and licensure titles no longer exist.

Because it is evident from the nature of the rule that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

This proposed amendment applies to all teacher certification candidates, 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:

New and revised teacher certifications exams were released to the field in May 2014.

Description of the Currently Required Certification Examinations

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

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

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

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

Ongoing Review of Teacher Certification Examinations

The edTPA Task Force was reconvened by request of the members of the Board of Regents in January 2016. Beginning in May 2016, the Task Force began to review the edTPA, as well as other teacher certification exams. Conversations were led by co-chairs, Dr. David Cantaffa (Assistant Provost for Educator Preparation, SUNY) and Dr. Jamie Dangler (Vice President for Academics, UUP). This work was also informed by the gathering of information across the State of New York by the Higher Education Committee chairs, Regents Cashin and Collins. Several other members of the NYS Board of Regents and the NYS Commissioner of Education participated in public forums over the past year to discuss the teacher certification exams.

At the January 2017 Board of Regents meeting, the co-chairs of the

Task Force presented the Board with their proposed recommendations. See Appendix A for the full report of the Task Force. One of the recommendations from the Task Force was to eliminate the requirement to take and pass the ALST (or use the safety net, which is in place until June 30, 2017) for teacher certification.

Proposed Regulation

As a result of feedback from the public forums and the edTPA Task Force, as well as meetings with deans of many education preparation programs, and the recommendations of the edTPA Task Force, the Department recommends that candidates for teacher certification no longer be required to take and pass the Academic Literacy Skills Test (ALST) in order to obtain an initial teaching certificate. Concerns about the assessment that were expressed by the Task Force and the deans included the cost, the need for the assessment in light of the other certification examinations, and the total number of exams required for teacher certification.

In lieu of this assessment, the Department will work with the testing vendor to make modifications to the EAS exam to eliminate the current constructed response items and replace them with constructed response item(s) which will assess both students' ability to teach a diverse population and also their literacy skills. As a result, the Department will extend the safety net for the EAS until the revised EAS becomes operational.

The Department is also proposing technical amendments to eliminate any references to the Liberal Arts and Sciences Test which is no longer administered as a teacher certification examination. The proposed amendment also makes technical amendments to eliminate regulations relating to modified licenses and certificates of qualification because these certificates and licensure titles no longer exist.

3. COSTS:

The proposed amendment does not impose any costs on teacher certification candidates in New York State, including those located in rural areas of the State. In fact, it will result in a cost savings to those pursuing teacher certification in New York State because candidates will no longer be required to take and pass the ALST for teacher certification, which requires candidates to pay a fee to take the exam.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment seeks to address concerns raised by the field, and to implement recommendations from the edTPA Task Force, which was reconvened at the request of the Board of Regents. This rule applies equally to all teacher certification candidates throughout the State, including those in rural areas, and removes barriers that some candidates face when pursuing certification as a teacher in this State.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed emergency amendment is to address concerns raised by the field, and to implement recommendations from the edTPA Task Force, which included the elimination of the Academic Literacy Skills Test (ALST), the establishment of a new passing score for the edTPA and potential revisions to the Educating all Student ("EAS") test.

Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, and no further steps were needed to ascertain that fact and none were taken. In fact, it may help to address potential teacher shortage issues in New York State by removing barriers to certification. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY/PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Criteria for Approval of Pathway Assessments in Languages Other Than English (LOTE)

I.D. No. EDU-13-17-00015-EP

Filing No. 184

Filing Date: 2017-03-13

Effective Date: 2017-03-13

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

Proposed Action: Amendment of sections 100.2 and 100.5 of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed amendment will allow the Department to seek applications from third parties to submit Languages other than English (LOTE) examinations to be approved for use as a pathway assessment toward graduation under Commissioner's Regulations 100.2(mm). It is anticipated that some entities may wish to submit assessments in order to make them available to students for graduation at the end of this school year.

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 March 2017 meeting in order to ensure there is adequate time for the Department to review examinations for potential use for graduation purposes before the end of the 2016-17 school year. It is also necessary to ensure that applicants throughout the State have an adequate amount of time to become familiar with the application process, which will be made available once the proposed amendment becomes effective as an emergency rule.

Subject: Criteria for Approval of Pathway Assessments in Languages other than English (LOTE).

Purpose: To provide for approval of pathway examinations in Languages other than English (LOTE) to meet diploma requirements.

Text of emergency/proposed rule: 1. Item (iv) of subclause (1) of clause (f) of subparagraph (i) of paragraph (5) of subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education, shall be amended, to read as follows:

(iv) a pathway assessment [(e.g., languages] in Languages other than English [)] approved by the commissioner in accordance with section 100.2 [(f)(2)] *mm* of this Part; or

2. Paragraph (2) of subdivision (f) of section 100.2 of the Regulations of the Commissioner of Education, shall be amended, to read as follows:

(2) Pathway assessments. With the approval of the commissioner, pathway assessments which measure an equivalent level of knowledge and skill may be substituted for the assessments specified in this Part. Notwithstanding the requirements of subdivision (d) of this section and section 100.5(b)(7)(v)(c) of this Part any examination that is used to satisfy the pathway assessment graduation requirements in section 100.5(a)(5)(i)(f) of this Part, other than those specifically enumerated in subdivision (mm) of this section relating to pathway assessments in career and technical education, *Languages other than English* and in the arts, shall meet the conditions and criteria set forth in subparagraphs (1)(i) through (vi) of this subdivision.

3. Subdivision (mm) of section 100.2 of the Regulations of the Commissioner of Education, shall be amended, to read as follows:

Pathway assessments in career and technical education, *Languages other than English*, and [in] the arts.

Except as provided in subdivision (f) of this section, students who have passed four required Regents examinations or department-approved alternative assessments in each of the areas of English Language Arts, mathematics, science, and social studies pursuant to section 100.5 of this Part and who are otherwise eligible to receive a high school diploma in June 2015 and thereafter may meet the fifth assessment requirement for graduation pursuant to section 100.5 of this Part by passing a fifth pathway assessment in career and technical education (CTE), *Languages other than English*, or [in] the arts, that is approved by the commissioner pursuant to the following conditions and criteria:

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) ...
- (7) ...

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 June 10, 2017.

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

Data, views or arguments may be submitted to: Doreen Ryan, State Education Department, State Education Building 2M, 89 Washington Avenue, Albany 12234, (518) 486-4662, email: REGCOMMENTS@NYSED.GOV

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

In January 2015, the Board established regulations to establish multiple, rigorous assessment pathways for graduation for all students. Those pathways included STEM, Humanities, Career and Technical Education (CTE), Languages other than English (LOTE), and the Arts. In March of 2016, the Board established a Career Development Occupational Studies (CDOS) pathway as a sixth option for New York State students.

Since that time, the Office of State Assessment has approved 30 examinations in CTE and 9 examinations in the Arts. At the time the regulations establishing the pathways were approved, the specific rules governing the criteria for evaluating pathway examinations, outlined in Commissioner's Regulations § 100.2(mm), only included approval of CTE and Arts examinations. The proposed amendment applies the same criteria for evaluating pathway examinations to the evaluation of LOTE pathway assessments, rather than the criteria set forth in 100.2(f). The proposed amendment is necessary to ensure that there is an appropriate set of criteria by which assessments in LOTE can be evaluated and approved to be used to meet assessment requirements for graduation.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

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

The proposed amendment does not impose any additional costs on the State, school districts, charter schools or SED. The amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize examinations for the evaluation of the languages other than English pathway. The proposed amendment applies the same criteria for evaluating pathway examinations to the evaluation of LOTE pathway assessments, rather than the criteria set forth in 100.2(f). The proposed amendment is necessary to ensure that there is an appropriate set of criteria by which assessments in LOTE can be evaluated and approved to be used to meet assessment requirements for graduation.

5. LOCAL GOVERNMENT MANDATES:

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

implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize examinations for the evaluation of the languages other than English pathway. The proposed amendment applies the same criteria for evaluating pathway examinations to the evaluation of LOTE pathway assessments, rather than the criteria set forth in 100.2(f). The proposed amendment is necessary to ensure that there is an appropriate set of criteria by which assessments in LOTE can be evaluated and approved to be used to meet assessment requirements for graduation.

6. PAPERWORK:

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

7. DUPLICATION:

The amendment does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment implements Regents policy to establish criteria for evaluating pathway examinations to the evaluation of LOTE pathway assessments, rather than the criteria set forth in 100.2(f). The proposed amendment is necessary to ensure that there is an appropriate set of criteria by which assessments in LOTE can be evaluated and approved to be used to meet assessment requirements for graduation.

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

Local Governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

In January 2015, the Board established regulations to establish multiple, rigorous assessment pathways for graduation for all students. Those pathways included STEM, Humanities, Career and Technical Education (CTE), Languages other than English (LOTE), and the Arts. In March of 2016, the Board established a Career Development Occupational Studies (CDOS) pathway as a sixth option for New York State students.

Since that time, the Office of State Assessment has approved 30 examinations in CTE and 9 examinations in the Arts. At the time the regulations establishing the pathways were approved, the specific rules governing the criteria for evaluating pathway examinations, outlined in Commissioner's Regulations § 100.2(mm), only included approval of CTE and Arts examinations. The proposed amendment applies the same criteria for evaluating pathway examinations to the evaluation of LOTE pathway assessments, rather than the criteria set forth in 100.2(f). The proposed amendment is necessary to ensure that there is an appropriate set of criteria by which assessments in LOTE can be evaluated and approved to be used to meet assessment requirements for graduation.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on school districts or charter schools.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements or costs on school districts or charter schools.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on school districts or charter schools.

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.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 689 public school districts in the State, and to charter schools that are authorized to issue Regents diplomas with respect to State assessments and high school graduation and diploma requirements, 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:

In January 2015, the Board established regulations to establish multiple, rigorous assessment pathways for graduation for all students. Those pathways included STEM, Humanities, Career and Technical Education (CTE), Languages other than English (LOTE), and the Arts. In March of 2016, the Board established a Career Development Occupational Studies (CDOS) pathway as a sixth option for New York State students.

Since that time, the Office of State Assessment has approved 30 examinations in CTE and 9 examinations in the Arts. At the time the regulations establishing the pathways were approved, the specific rules governing the criteria for evaluating pathway examinations, outlined in Commissioner's Regulations § 100.2(mm), only included approval of CTE and Arts examinations. The proposed amendment applies the same criteria for evaluating pathway examinations to the evaluation of LOTE pathway assessments, rather than the criteria set forth in 100.2(f). The proposed amendment is necessary to ensure that there is an appropriate set of criteria by which assessments in LOTE can be evaluated and approved to be used to meet assessment requirements for graduation.

3. COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

In order to ensure that LOTE assessments are being evaluated consistently across the State, no alternatives were considered.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The proposed amendment implements Regents policy to establish criteria for evaluating pathway examinations to the evaluation of LOTE pathway assessments, rather than the criteria set forth in 100.2(f). The proposed amendment is necessary to ensure that there is an appropriate set of criteria by which assessments in LOTE can be evaluated and approved to be used to meet assessment requirements for graduation.

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

NOTICE OF ADOPTION

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

I.D. No. EDU-45-16-00005-A

Filing No. 182

Filing Date: 2017-03-13

Effective Date: 2017-03-29

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

Action taken: Amendment of sections 30-3.4 and 30-3.5 of Title 8 NYCRR.

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

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

Purpose: To provide New York City with flexibility in the student performance category for teacher and principal evaluations.

Text or summary was published in the November 9, 2016 issue of the Register, I.D. No. EDU-45-16-00005-EP.

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

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

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Extend the Time Validity of Certain Expired Provisional, Initial or Transitional Certificates for Three Years

I.D. No. EDU-48-16-00007-A

Filing No. 181

Filing Date: 2017-03-13

Effective Date: 2017-03-29

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

Action taken: Amendment of section 80-1.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 215, 3001, 3003 and 3009

Subject: Extend the time validity of certain expired provisional, initial or transitional certificates for three years.

Purpose: To extend time of certain certificates if candidates meets criteria and is unable to complete the requirements.

Text or summary was published in the November 30, 2016 issue of the Register, I.D. No. EDU-48-16-00007-P.

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

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

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Physical Presence in New York State

I.D. No. EDU-52-16-00011-A

Filing No. 179

Filing Date: 2017-03-13

Effective Date: 2017-03-29

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

Action taken: Amendment of section 3.56 of Title 8 NYCRR.

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

Subject: Physical presence in New York State.

Purpose: To establish fees and procedures for higher education institutions to operate out-of-state institutions in New York State.

Text or summary was published in the December 28, 2016 issue of the Register, I.D. No. EDU-52-16-00011-P.

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

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

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Multiple Measures Process for the EdTPA

I.D. No. EDU-13-17-00016-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 80-1.5(d) to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 215(not subdivided), 3001, 3003, 3004 and 3009

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 of proposed rule: 1. Subdivision (d) of section 80-1.5 of the Regulations of the Commissioner of Education shall be added to read as follows:

(d) *Multiple Measures Review Process for the edTPA.*

(1) *A candidate may apply for a waiver of the edTPA requirement on or after the effective date of this section through a multiple-measures review process. Provided however, that this process will only apply if and when a new standard setting panel has been convened and makes a recommendation to the Commissioner for a new passing score for the edTPA and such score has been approved by the Commissioner for use with the edTPA, and the candidate meets the requirements set forth in paragraph (2) of this subdivision.*

(2) *To be eligible for a waiver of the requirement for the edTPA through the multiple-measures review process, a candidate shall:*

(i) *receive a score within one standard deviation below the new passing score set by the standard setting panel, as determined by the Commissioner;*

(ii) *have a cumulative grade point average of a 3.0 in his/her program area or its equivalent, as determined by the Commissioner;*

(iii) *receive a satisfactory passing score on all other examinations (or available safety nets) required for the teaching certificate sought; and*

(iv) *provide recommendations from faculty and cooperating teachers or other qualified individuals, as determined by the Department, that the teacher has the minimum knowledge, skills and abilities in pedagogy to enter the classroom.*

(3) *The Department will convene a multiple measures review panel to review waiver applications submitted pursuant to this section. Such panel shall be comprised of two P-12 teachers, two principals, two superintendents, two higher education faculty and one staff member from the Department. The decision of the majority of the members shall determine whether a candidate will receive a waiver under this subdivision and such decision shall be final.*

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

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, Office of Higher Education, Room 979, Albany, NY 12234, (518) 408-1189, email: peg.rivers@nysed.gov

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

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 3001 establishes the qualifications of teachers in the classroom.

Education Law 3003 establishes the qualifications of superintendents in the state and requires that superintendent to possess a certificate issued by the Department.

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

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

2. LEGISLATIVE OBJECTIVES:

The proposed rule is necessary to implement recommendations from the edTPA Task Force, which was reconvened at the request of the Board of Regents, to establish a multiple measures review process for the edTPA for certain candidates to seek a waiver from the edTPA examination requirement for initial certification as a teacher in this State.

3. NEEDS AND BENEFITS:

New and revised certification exams were released to the field in May 2014, including the edTPA.

The edTPA, a subject-specific multi-measure performance assessment, is comprised of three tasks: (i) planning instruction and examination; (ii) instructing and engaging students in learning; and (iii) assessing student learning. It was developed by Stanford University in partnership with the American Association of Colleges for Teacher Education (AACTE).

Commencing in May 2014, a safety net for the edTPA was established—candidates who do not pass the edTPA can take and pass the Assessment of Teaching Skills – Written (ATS-W). The Board of Regents also established an edTPA Task Force which included representatives from CUNY, SUNY, clcu, the Teacher Education Advisory Group, the United University Professors, the Professional Staff Congress and P-12. The edTPA safety net (along with the other safety nets for the teacher certification exams) was extended until June 30, 2017 at the April 2016 Board of Regents meeting.

The edTPA Task Force was reconvened by request of the members of the Board of Regents in January 2016. Beginning in May 2016, the Task Force began to review the edTPA, as well as other teacher certification exams. Conversations were led by co-chairs, Dr. David Cantaffa (Assistant Provost for Educator Preparation, SUNY) and Dr. Jamie Dangler (Vice President for Academics, UUP). This work was also informed by the gathering of information across the State of New York by the Higher Education Committee chairs, Regents Cashin and Collins. Several other members of the NYS Board of Regents and the NYS Commissioner of Education participated in public forums over the past year to discuss the teacher certification exams.

Recommendations from the edTPA Task Force:

At the January 2017 Board of Regents meeting, the co-chairs of the edTPA Task Force presented their recommendations. The recommendations encompassed the edTPA as well as the other certification exams. Please see Related Regents Items section for the report of the Task Force for a chart outlining the recommendations from the Task Force.

(1) The first recommendation was for the Department to establish a standard setting committee to determine if the passing score for the edTPA should be reset and gradually phased in over several years. The Department is working with SCALE and the testing vendor to establish a timeline for implementation and convene a standard setting committee. Our goal is for the Commissioner to implement a new cut score in the fall of 2017, after a recommendation from the standard setting panel.

(2) As a part of the first recommendation, the Task Force has asked the Department to implement a multiple measures review process in cases where there is compelling evidence that the candidate is ready to teach but did not achieve a passing score on the edTPA. In order to request a multiple measures review, the candidate must score within one standard deviation of the passing score as established by the standard setting committee, and must demonstrate that they have the knowledge, skills, and abilities to become a teacher of record. A regulatory change is necessary to implement this process, and is recommended to the board. Such multiple measures would include:

- Recommendation(s) from college/university faculty who have been responsible for program-level assessment of a teacher candidate's clinical practice.
- Recommendations from the teacher candidate's cooperating teacher(s).
- GPA - must have a GPA of 3.0 or higher in their program area, or the substantial equivalent as determined by the Commissioner.
- Have achieved a passing score on the other New York State Teacher Certification Exams (e.g., Educating All Students exam, Content Specialty Tests).
- Recommendations from faculty and cooperating teachers or other qualified individuals, as determined by the Department, that the teacher has the minimum knowledge, skills and abilities in pedagogy to enter the classroom.

A panel consisting of two P-12 teachers, two principals, two superintendents, two higher education faculty, and one NYSED staff member will review any waiver applications submitted to the Department on a periodic basis, as needed.

(3) The Task Force requested that the Department work with SCALE and the testing vendor to release the qualifications of scorers through an annual report of de-identified individual level information, such as institution/organization affiliation, subject area and grade area, years of experience as an educator, baseline demographics, and length of time as an edTPA scorer. The Department will work with SCALE and the testing vendor to determine what level of scorer information can be released in an annual report.

(4) The Task Force has asked the Department to work with the field, SCALE, and the testing vendor to develop and implement a process to review specific edTPA handbooks. The process would entail a review of the claims brought forth by education professionals in a specific certification area, with possible outcomes of this process as follows:

i. NYSED and representatives of the certification area will work with SCALE to substantively revise the applicable edTPA handbook.

ii. If handbook revision is not feasible for the certification area under evaluation, the Commissioner of Education may approve an alternative performance assessment for this certification area.

No regulatory change is needed to develop and implement this process, and the Department has already started having conversations with SCALE and the testing vendor to establish this review process.

(5) The Task Force has asked the Department to convene a clinical practice work group to review the length and requirements of student teaching. The Department will invite members of P-12 and higher education to be a part of this work group. Ultimately, the work group will make recommendations to the Board of Regents to amend the current requirements. At that time, a regulation change would be needed.

(6) The Task force recommends increasing the voucher program. While no regulation change is needed, this is a part of the Regents budget request.

(7) The Task Force recommends that the Department work with the testing vendor to review the Educating All Students (EAS) exam. The review will focus on the constructed response items and will potentially result in revising a portion of the assessment so that it assesses both the candidate's ability to serve a diverse student body and assess the potential teacher's literacy skills.

(8) Last, the Task Force has recommended that the Department eliminate the requirement that students must take and pass the Academic Literacy Skills Test (ALST) to become certified. As discussed in #7 (above), the Department will review the EAS assessment and potentially revise as needed to assess the potential teacher's literacy skills. The Department will present, separately, an emergency regulation at the February Board meeting to accomplish this.

Proposed Amendment

The Department recommends an amendment to Section 80-1.5 of the Regulations of the Commissioner of Education to make available, for those candidates who take the edTPA after a new passing score has been established and implemented, access to the "multiple-measures review process" if they fail to receive a passing score on the edTPA but fall within one standard deviation (as determined by the standard setting committee) below the new passing score, provided they meet additional requirements outlined in the regulations. Most important, to be eligible for this process, candidates must: (1) fall within one standard deviation below the new passing score, (2) have a minimum GPA of 3.0, and (3) must pass all other exams (or available safety nets) required for the teaching certificate they are seeking. Recommendations from faculty and cooperating teachers, as well as evidence of extenuating circumstances will be considered by the panel in addition to evidence of having met these requirements. See Attachment C for a copy of the proposed amendment. Until such time as this new edTPA passing score is established and the multiple measures review process is implemented, the edTPA safety net will remain in effect.

4. COSTS:

a. Costs to State government: The amendment does not impose any additional costs on State government, including the State Education Department. However, SED staff members may need to spend time serving on the multiple measures review panel. However, the Department anticipates that any staff time to attend the panel meetings will be absorbed into the staff member's workday.

b. Costs to local government: The amendment does not impose any costs on local government, including school districts and BOCES. However, superintendents, teachers and principal may voluntarily serve on the multiple measures review panel. The Department anticipates that any staff time to attend the panel meetings will be absorbed into the educator's workday.

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, school districts or BOCES. Any service on the multiple measures review panel is voluntary.

6. PAPERWORK:

The proposed amendment will require teacher candidates to apply for a waiver of the edTPA requirement through the multiple measure review panel.

7. DUPLICATION:

The rule does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

The amendment was proposed in response to concerns raised in the field as well as in response to the recommendations of the edTPA Task Force. The amendment applies equally to all candidates pursuing teacher certification in New York State.

9. FEDERAL STANDARDS:

There are no applicable Federal standards related to the amendment.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed emergency amendment will be adopted as a permanent rule at the July 2017 Board of Regents meeting, and will become effective as a permanent rule on August 2, 2017.

Regulatory Flexibility Analysis

(a) Small businesses:

The Department is proposing an amendment to the Commissioner's Regulations to establish a multiple measures review process for candidates seeking a waiver from the edTPA requirement for an initial certificate (i.e., candidates who take and fail the edTPA but whose score is within one standard deviation of the passing score established by a standard setting committee if a new passing score is established).

The proposed amendments does 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 will effect teaching candidates who wish to apply for a waiver from the edTPA requirements for an initial teaching certificate.

2. COMPLIANCE REQUIREMENTS:

New and revised certification exams were released to the field in May 2014, including the edTPA.

The edTPA, a subject-specific multi-measure performance assessment, is comprised of three tasks: (i) planning instruction and examination; (ii) instructing and engaging students in learning; and (iii) assessing student learning. It was developed by Stanford University in partnership with the American Association of Colleges for Teacher Education (AACTE).

Commencing in May 2014, a safety net for the edTPA was established—candidates who do not pass the edTPA can take and pass the Assessment of Teaching Skills – Written (ATS-W). The Board of Regents also established an edTPA Task Force which included representatives from CUNY, SUNY, C1cu, the Teacher Education Advisory Group, the United University Professions, the Professional Staff Congress and P-12. The edTPA safety net (along with the other safety nets for the teacher certification exams) was extended until June 30, 2017 at the April 2016 Board of Regents meeting.

The edTPA Task Force was reconvened by request of the members of the Board of Regents in January 2016. Beginning in May 2016, the Task Force began to review the edTPA, as well as other teacher certification exams. Conversations were led by co-chairs, Dr. David Cantaffa (Assistant Provost for Educator Preparation, SUNY) and Dr. Jamie Dangler (Vice President for Academics, UUP). This work was also informed by the gathering of information across the State of New York by the Higher Education Committee chairs, Regents Cashin and Collins. Several other members of the NYS Board of Regents and the NYS Commissioner of Education participated in public forums over the past year to discuss the teacher certification exams.

Recommendations from the edTPA Task Force:

At the January 2017 Board of Regents meeting, the co-chairs of the edTPA Task Force presented their recommendations. The recommendations encompassed the edTPA as well as the other certification exams. Please see Related Regents Items section for the report of the Task Force for a chart outlining the recommendations from the Task Force.

(1) The first recommendation was for the Department to establish a standard setting committee to determine if the passing score for the edTPA should be reset and gradually phased in over several years. The Department is working with SCALE and the testing vendor to establish a timeline for implementation and convene a standard setting committee. Our goal is

for the Commissioner to implement a new cut score in the fall of 2017, after a recommendation from the standard setting panel.

(2) As a part of the first recommendation, the Task Force has asked the Department to implement a multiple measures review process in cases where there is compelling evidence that the candidate is ready to teach but did not achieve a passing score on the edTPA. In order to request a multiple measures review, the candidate must score within one standard deviation of the passing score as established by the standard setting committee, and must demonstrate that they have the knowledge, skills, and abilities to become a teacher of record. A regulatory change is necessary to implement this process, and is recommended to the board. Such multiple measures would include:

- Recommendation(s) from college/university faculty who have been responsible for program-level assessment of a teacher candidate's clinical practice.
- Recommendations from the teacher candidate's cooperating teacher(s).
- GPA - must have a GPA of 3.0 or higher in their program area, or the substantial equivalent as determined by the Commissioner.
- Have achieved a passing score on the other New York State Teacher Certification Exams (e.g., Educating All Students exam, Content Specialty Tests).
- Recommendations from faculty and cooperating teachers or other qualified individuals, as determined by the Department, that the teacher has the minimum knowledge, skills and abilities in pedagogy to enter the classroom.

A panel consisting of two P-12 teachers, two principals, two superintendents, two higher education faculty, and one NYSED staff member will review any waiver applications submitted to the Department on a periodic basis, as needed.

(3) The Task Force requested that the Department work with SCALE and the testing vendor to release the qualifications of scorers through an annual report of de-identified individual level information, such as institution/organization affiliation, subject area and grade area, years of experience as an educator, baseline demographics, and length of time as an edTPA scorer. The Department will work with SCALE and the testing vendor to determine what level of scorer information can be released in an annual report.

(4) The Task Force has asked the Department to work with the field, SCALE, and the testing vendor to develop and implement a process to review specific edTPA handbooks. The process would entail a review of the claims brought forth by education professionals in a specific certification area, with possible outcomes of this process as follows:

- i. NYSED and representatives of the certification area will work with SCALE to substantively revise the applicable edTPA handbook.
- ii. If handbook revision is not feasible for the certification area under evaluation, the Commissioner of Education may approve an alternative performance assessment for this certification area.

No regulatory change is needed to develop and implement this process, and the Department has already started having conversations with SCALE and the testing vendor to establish this review process.

(5) The Task Force has asked the Department to convene a clinical practice work group to review the length and requirements of student teaching. The Department will invite members of P-12 and higher education to be a part of this work group. Ultimately, the work group will make recommendations to the Board of Regents to amend the current requirements. At that time, a regulation change would be needed.

(6) The Task force recommends increasing the voucher program. While no regulation change is needed, this is a part of the Regents budget request.

(7) The Task Force recommends that the Department work with the testing vendor to review the Educating All Students (EAS) exam. The review will focus on the constructed response items and will potentially result in revising a portion of the assessment so that it assesses both the candidate's ability to serve a diverse student body and assess the potential teacher's literacy skills.

(8) Last, the Task Force has recommended that the Department eliminate the requirement that students must take and pass the Academic Literacy Skills Test (ALST) to become certified. As discussed in #7 (above), the Department will review the EAS assessment and potentially revise as needed to assess the potential teacher's literacy skills. The Department will present, separately, an emergency regulation at the February Board meeting to accomplish this.

Proposed Amendment

The Department recommends an amendment to Section 80-1.5 of the Regulations of the Commissioner of Education to make available, for those candidates who take the edTPA after a new passing score has been established and implemented, access to the "multiple-measures review process" if they fail to receive a passing score on the edTPA but fall within one standard deviation (as determined by the standard setting committee) below the new passing score, provided they meet additional requirements

outlined in the regulations. Most important, to be eligible for this process, candidates must: (1) fall within one standard deviation below the new passing score, (2) have a minimum GPA of 3.0, and (3) must pass all other exams (or available safety nets) required for the teaching certificate they are seeking. Recommendations from faculty and cooperating teachers, as well as evidence of extenuating circumstances will be considered by the panel in addition to evidence of having met these requirements. See Attachment C for a copy of the proposed amendment. Until such time as this new edTPA passing score is established and the multiple measures review process is implemented, the edTPA safety net will remain in effect.

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, however, there may be costs imposed on school districts for superintendents, principals and teachers time to participate on the multiple measures review panel. However, participation on the panel is voluntary and the Department anticipates that any time spent on the panel will be absorbed into the educator's typical workday.

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 address concerns raised by the field and to address the recommendations from the edTPA Task Force related to the teacher certification exams. This rule applies equally to all candidates for teacher certification throughout the State. In order to ensure uniform certification candidates across the State, no alternatives were considered.

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 teacher certification candidates, 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:

New and revised certification exams were released to the field in May 2014, including the edTPA.

The edTPA, a subject-specific multi-measure performance assessment, is comprised of three tasks: (i) planning instruction and examination; (ii) instructing and engaging students in learning; and (iii) assessing student learning. It was developed by Stanford University in partnership with the American Association of Colleges for Teacher Education (AACTE).

Commencing in May 2014, a safety net for the edTPA was established—candidates who do not pass the edTPA can take and pass the Assessment of Teaching Skills – Written (ATS-W). The Board of Regents also established an edTPA Task Force which included representatives from CUNY, SUNY, clcu, the Teacher Education Advisory Group, the United University Professions, the Professional Staff Congress and P-12. The edTPA safety net (along with the other safety nets for the teacher certification exams) was extended until June 30, 2017 at the April 2016 Board of Regents meeting.

The edTPA Task Force was reconvened by request of the members of the Board of Regents in January 2016. Beginning in May 2016, the Task Force began to review the edTPA, as well as other teacher certification exams. Conversations were led by co-chairs, Dr. David Cantaffa (Assistant Provost for Educator Preparation, SUNY) and Dr. Jamie Dangler (Vice President for Academics, UUP). This work was also informed by the gathering of information across the State of New York by the Higher Education Committee chairs, Regents Cashin and Collins. Several other members of the NYS Board of Regents and the NYS Commissioner of Education participated in public forums over the past year to discuss the teacher certification exams.

Recommendations from the edTPA Task Force:

At the January 2017 Board of Regents meeting, the co-chairs of the edTPA Task Force presented their recommendations. The recommendations encompassed the edTPA as well as the other certification exams. Please see Related Regents Items section for the report of the Task Force for a chart outlining the recommendations from the Task Force.

(1) The first recommendation was for the Department to establish a standard setting committee to determine if the passing score for the edTPA should be reset and gradually phased in over several years. The Department is working with SCALE and the testing vendor to establish a timeline

for implementation and convene a standard setting committee. Our goal is for the Commissioner to implement a new cut score in the fall of 2017, after a recommendation from the standard setting panel.

(2) As a part of the first recommendation, the Task Force has asked the Department to implement a multiple measures review process in cases where there is compelling evidence that the candidate is ready to teach but did not achieve a passing score on the edTPA. In order to request a multiple measures review, the candidate must score within one standard deviation of the passing score as established by the standard setting committee, and must demonstrate that they have the knowledge, skills, and abilities to become a teacher of record. A regulatory change is necessary to implement this process, and is recommended to the board. Such multiple measures would include:

- Recommendation(s) from college/university faculty who have been responsible for program-level assessment of a teacher candidate's clinical practice.
- Recommendations from the teacher candidate's cooperating teacher(s).
- GPA - must have a GPA of 3.0 or higher in their program area, or the substantial equivalent as determined by the Commissioner.
- Have achieved a passing score on the other New York State Teacher Certification Exams (e.g., Educating All Students exam, Content Specialty Tests).
- Recommendations from faculty and cooperating teachers or other qualified individuals, as determined by the Department, that the teacher has the minimum knowledge, skills and abilities in pedagogy to enter the classroom.

A panel consisting of two P-12 teachers, two principals, two superintendents, two higher education faculty, and one NYSED staff member will review any waiver applications submitted to the Department on a periodic basis, as needed.

(3) The Task Force requested that the Department work with SCALE and the testing vendor to release the qualifications of scorers through an annual report of de-identified individual level information, such as institution/organization affiliation, subject area and grade area, years of experience as an educator, baseline demographics, and length of time as an edTPA scorer. The Department will work with SCALE and the testing vendor to determine what level of scorer information can be released in an annual report.

(4) The Task Force has asked the Department to work with the field, SCALE, and the testing vendor to develop and implement a process to review specific edTPA handbooks. The process would entail a review of the claims brought forth by education professionals in a specific certification area, with possible outcomes of this process as follows:

- i. NYSED and representatives of the certification area will work with SCALE to substantively revise the applicable edTPA handbook.
- ii. If handbook revision is not feasible for the certification area under evaluation, the Commissioner of Education may approve an alternative performance assessment for this certification area.

No regulatory change is needed to develop and implement this process, and the Department has already started having conversations with SCALE and the testing vendor to establish this review process.

(5) The Task Force has asked the Department to convene a clinical practice work group to review the length and requirements of student teaching. The Department will invite members of P-12 and higher education to be a part of this work group. Ultimately, the work group will make recommendations to the Board of Regents to amend the current requirements. At that time, a regulation change would be needed.

(6) The Task Force recommends increasing the voucher program. While no regulation change is needed, this is a part of the Regents budget request.

(7) The Task Force recommends that the Department work with the testing vendor to review the Educating All Students (EAS) exam. The review will focus on the constructed response items and will potentially result in revising a portion of the assessment so that it assesses both the candidate's ability to serve a diverse student body and assess the potential teacher's literacy skills.

(8) Last, the Task Force has recommended that the Department eliminate the requirement that students must take and pass the Academic Literacy Skills Test (ALST) to become certified. As discussed in #7 (above), the Department will review the EAS assessment and potentially revise as needed to assess the potential teacher's literacy skills. The Department will present, separately, an emergency regulation at the February Board meeting to accomplish this.

Proposed Amendment

The Department recommends an amendment to Section 80-1.5 of the Regulations of the Commissioner of Education to make available, for those candidates who take the edTPA after a new passing score has been established and implemented, access to the "multiple-measures review process" if they fail to receive a passing score on the edTPA but fall within one standard deviation (as determined by the standard setting committee)

below the new passing score, provided they meet additional requirements outlined in the regulations. Most important, to be eligible for this process, candidates must: (1) fall within one standard deviation below the new passing score, (2) have a minimum GPA of 3.0, and (3) must pass all other exams (or available safety nets) required for the teaching certificate they are seeking. Recommendations from faculty and cooperating teachers, as well as evidence of extenuating circumstances will be considered by the panel in addition to evidence of having met these requirements. See Attachment C for a copy of the proposed amendment. Until such time as this new edTPA passing score is established and the multiple measures review process is implemented, the edTPA safety net will remain in effect.

3. COSTS:

The proposed amendment does not impose any costs on teacher certification candidates in New York State, including those located in rural areas of the State.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment seeks to address concerns raised by the field, and to implement recommendations from the edTPA Task Force, which was reconvened at the request of the Board of Regents. This rule applies equally to all teacher certification candidates throughout the State, and removes barriers that some candidates face when pursuing certification—specifically for those candidates who fail to achieve a passing score on the edTPA but score within one standard deviation of the new passing score.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed amendment is to address concerns raised by the field, and to implement recommendations from the edTPA Task Force, which was reconvened at the request of the Board of Regents, to establish a multiple measures review process for the edTPA for those candidates who do not achieve a passing score on the edTPA but score within one standard deviation of the passing score as established by a standard setting committee.

Because of the nature of the proposed amendment, it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, and no further steps were needed to ascertain that fact and none were taken. In fact, it may help to address potential teacher shortage issues in New York State by allowing candidates to obtain a waiver from the edTPA requirement for initial certification as a teacher in this State. Accordingly, a job impact statement is not required and one has not been prepared.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

School Counseling, Certification Requirements for School Counselors and the School Counselor Program Registration Requirements

I.D. No. EDU-06-16-00004-RP

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

Proposed Action: Amendment of sections 52.21(a), (d), 80-2.1, 80-2.9(1)(iii), (2)(iii), 80-3.1, 80-5.9 and 100.2(j); addition of sections 80-3.11, 80-3.12 and 80-5.23 to Title 8 NYCRR,

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided), 305(1), (2), 308, 3001(2), 3004(1), 3006(1)(b) and 3009(1)

Subject: School counseling, certification requirements for school counselors and the school counselor program registration requirements.

Purpose: School counseling/guidance programs, certification requirements for school counselors, and school counselor program registration.

Substance of revised rule: The Commissioner of Education proposes to amend §§ 52.21, 80-2, 80-3, 80-5 and 100.2(j) of the Commissioner's regulations, relating to comprehensive developmental school counseling/guidance programs, certification requirements for school counselors and registration requirements for school counselor preparation programs. The following is a summary of the substance of the rule.

Subdivision (a) of section 52.21 is amended to require that programs leading to initial or professional certification in school counseling meet the new requirements outlined in subdivision (d) of section 52.21 by September 1, 2020.

A new subdivision (d) is added to section 52.21 to prescribe the requirements for institutions of higher education offering school counseling preparation programs leading to an initial certificate, and for those programs leading to a professional certificate.

The title of Subpart 80-2 is amended to clarify that the requirements of Subpart 80-2 do not apply to certificates for school counseling applied and qualified for on or after September 2, 2022.

Section 80-2.1 is amended to clarify that candidates who apply and qualify for the provisional certificate in the title school counselor on or before September 2, 2022 shall be subject to the requirements of this Subpart. Candidates who do not meet these requirements shall be subject to the requirements of Subpart 80-3 of this Part, unless otherwise specifically prescribed in this Part. Candidates with an expired provisional certificate in the title school counselor who apply for permanent certificates prior to September 2, 2022 shall be subject to this Subpart, provided that they have been issued a provisional certificate in this title and have met all requirements for the permanent certificate while under a provisional certificate that was in effect. Candidates with expired provisional certificates who apply for permanent certificates in the title school counselor on or after September 2, 2022 or who do not meet these conditions shall be subject to the requirements of Subpart 80-3 of the Part, unless otherwise specifically prescribed in this Part.

Sections 80-2.9(1)(iii) and 80-2.9(2)(iii) are amended to include the definition of pupil personnel service professional as defined in section 80-3.11.

The title of Subpart 80-3 is amended to clarify that the requirements of Subpart 80-3 for school counselor certificates shall apply for candidates who apply or qualify for such certificate on or after September 2, 2022.

Section 80-3.1 is amended to clarify that candidates who apply for a permanent certificate in the title school counselor shall be subject to the requirements of Subpart 80-2 of this Part, provided that they have been issued a provisional certificate in this title for which the permanent certificate is sought and have met all requirements for the permanent certificate while under a valid provisional certificate that was in effect after that date and that candidates who apply for certificates on or after September 2, 2022 shall be subject to the requirements of Subpart 80-3.

A new Section 80-3.11 is added to establish the requirements for both an initial certificate for school counselor, and a professional certificate for candidates who apply for a school counselor certificate on or after September 2, 2022.

A new Section 80-3.12 proscribes the requirements necessary for meeting the education requirements for school counselor certificates through individual evaluation.

Section 80-5.9 is amended to allow a candidate in a registered or approved graduate program of school counseling to obtain an internship certificate when the registered program includes internship experience, and the candidate has completed at least one-half of the semester hour requirements of the program.

A new Section 80-5.23 is added to set forth the standards and process of the Commissioner of Education to endorse the certificate of another state or territory of the United States or the District of Columbia for service as a school counselor, provided that the candidate meets the requirements set forth therein.

The title of Subdivision (j) of section 100.2 is amended to include comprehensive developmental school counseling/guidance programs. Paragraph (1) of section 100.2(j) is amended to clarify that the existing guidance programs shall apply until the 2019-2020 school year.

A new Paragraph (2) is added to section 100.2(j) to require public school districts to have a comprehensive developmental school counseling/guidance program, beginning with the 2019-2020 school year and describes the requirements thereof. The full text of the terms are available by visiting <http://www.counsel.nysed.gov/rulesandregs>.

Revised rule making(s) were previously published in the State Register on November 30, 2016.

Revised rule compared with proposed rule: Substantial revisions were made in sections 100.2(j)(2) and 80-3.11.

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

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

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

Revised Regulatory Impact Statement

Since publication of a Notice of Revise Rule Making in the State Register on November 30, 2016, the following substantial revisions were made to the proposed rule:

Section 80-3.11 is revised to remove the reference to the requirement for continuing teacher and leader education ("CTLE") for school counselors in light of the recent statutory amendments to Education Law § 3006-a, which only require CTLE for certain teachers and school leaders.

Section 100.2(j)(2) is revised to revert back to previous language in recognition of the distinct administrative structure of the New York City Department of Education to ensure that the existing requirement for a school counseling program plan continues to apply to high schools in the City of New York.

The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Revised Rule Making in the State Register on November 30, 2016, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith. The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Revised Rule Making in the State Register on November 30, 2016, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith. The above revisions to the proposed rule do not require any revisions to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of the Notice of Revised Rule Making in the State Register on November 30, 2016, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The revised rule will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact on jobs or employment opportunities, no further measures were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Revised Rule Making in the State Register on November 30, 2016, the State Education Department received the following comments.

1. COMMENT:

Commenters expressed concern surrounding the statement "School counseling/guidance core curriculum instruction for the purpose of addressing student competencies related to career/college readiness, academic skills and social/emotional development by a certified school counselor (s)..." The reference to "school counseling" as well as the reference to a non-existent "core curriculum" is problematic for counselors. This opens the door for us to be sent into the classroom or to provide instruction as teachers; which defeats; the purpose of having two disciplines. This section should be deleted as it is often misconstrued in relation to the role that a counselor plays in the New York City School System.

DEPARTMENT RESPONSE:

The proposed amendments do not expand the scope of practice of a school counselor to include general classroom teaching duties. The Department recognizes the vital role of all professionals in schools, and merely proposes to update the terms describing the school counseling/guidance program to better reflect the academic and professional training of school counselors as required by the amended regulations. In addition, the regulations require that school counselor preparation programs include instruction in school counseling core curriculum and a minimum of 40 clock hours of direct student contact in group counseling, individual counseling and school counseling core curriculum lesson delivery. Therefore, no revisions are necessary.

2. COMMENT:

The New York State School Counselor Association supports the proposed amendments. We have been proud to be involved since the beginning of the process in 2013. Many of our Executive Board members and school counselors, administrators and counselor educators from all corners of New York State have been immersed in this effort. We were honored to be involved in meetings at the State Education Department that created a collaborative atmosphere among stakeholders in this process. We were able to have productive conversations with our colleagues from other professions as well as UFT and NYSUT leaders. We feel that these open and honest exchanges have allowed the various groups to learn about each other's points of view and have led to regulations that will benefit all children and adolescents, and modernize school counseling programs and school counselor education programs around New York State.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

3. COMMENT:

Commenters were concerned that school counselors were not qualified to deliver the services in the proposed amendments. While guidance counselors are trained in advising students with their academics, they have neither the training nor the education to help students with behavioral issues or mental illness. Restricting counseling to guidance counselors will not meet students' needs, especially students with disabilities.

DEPARTMENT RESPONSE:

See Responses to Comments # 6, 42, 46, and 47 in the Assessment of Public Comment published in the State Register on November 30, 2016.

4. COMMENT:

The proposed regulations would create new onerous paperwork responsibilities for school counselors if they must complete an annual individual progress review plan for each student. This would be a huge burden and take time away from helping students. In a time when children and adolescent mental health needs are rising, we should not be adding additional responsibilities on school counselors to provide these services, when school social workers are already trained and prepared to do so and are currently providing these services in many districts. Putting additional responsibilities on school counselors without providing the extensive training that school social workers receive will only diminish the quality of care for our students and families.

DEPARTMENT RESPONSE:

See Responses to Comments #26 and 27 in the Assessment of Public Comment published in the State Register on November 30, 2016.

5. COMMENT:

Commenter was encouraged by the substantial amendments made in consultation with stakeholders, specifically that "school counselor" includes licensed guidance counselors in New York City, the accurate reference to the administrative structure of the public schools in New York City, the removal of references to the American School Counselor Association (ASCA) as the primary professional organization prescribing specific national standards, and additional language which ensures that nothing in the proposed amendments prohibit certified or licensed school psychologists or school social workers from providing direct student services within their applicable scope of practice.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

6. COMMENT:

Commenter expressed concern that the amendment prohibits school social workers and school psychologists from providing mandated counseling service in New York schools.

DEPARTMENT RESPONSE:

See Response to Comment #3.

7. COMMENT:

Commenters were concerned about a workload increase for school counselors and displacement of school social workers and psychologists, who have forged strong relationships with students and their families, as well as with neighborhood mental-health service providers.

DEPARTMENT RESPONSE:

See Responses to Comments #3 and 4.

8. COMMENT:

Commenters expressed concern that the regulations do not mandate a school counselor to student ratio which diminishes the ability to provide quality supports to students.

DEPARTMENT RESPONSE:

See Response to Comment #53 in the Assessment of Public Comment published in the State Register on November 30, 2016.

9. COMMENT:

Commenters thought the additional language about the scope of practice of school social workers and school psychologists was exclusionary, and sought to amend the regulations to reflect inclusive practices.

DEPARTMENT RESPONSE:

This regulation only relates to the continued implementation of the school counseling/guidance program, and therefore it would be inappropriate to further define the role of a school psychologist or school social worker beyond the context of the school counseling/guidance program. In response to public comment about the overlapping roles of these individuals in schools, additional language relating to the scope of practice of certified or licensed school psychologists or certified or licensed school social workers pursuant to Part 80 of the Commissioner's regulations was included to ensure that nothing in the school counseling/guidance program regulations would override such scope. Therefore, no revisions are necessary.

10. COMMENT:

Commenters expressed concern that the terms relating to the scope of practice which were added in response to the prior public comment period and the components of the school counseling/guidance programs which include social/emotional development was contradictory. Commenter specifically requested removal of the language relating to social/emotional development.

DEPARTMENT RESPONSE:

Consistent with the existing regulation and each respective scope of practice, the proposed rulemaking does not remove the ability of certified or licensed school psychologists, or certified or licensed school social workers to provide individual or group counseling or address issues related to social/emotional development. See also responses to Comments #3 and 9.

11. COMMENT:

Commenter requested that certain technical amendments be made to § 100.2(j)(1) to mirror § 100.2(j)(2).

DEPARTMENT RESPONSE:

Because the proposed amendments to § 100.2(j)(2) become effective in the 2019-2020 school year, the Department believes that in order to provide school districts with the time to plan for and implement the changes to the comprehensive school counseling/guidance program, as well as to provide continuity until such time as the provisions of § 100.2(j)(2) are effective, no revisions are necessary.

12. COMMENT:

Commenter stressed the need for a multi-team approach to address a multitude of needs. Specifically, that school social workers, school psychologists and school counselors provide students with the social-emotional supports students need to succeed in school.

DEPARTMENT RESPONSE:

See Response to Comment #3.

13. COMMENT:

Commenter expressed concern about the overlap of duties of school social workers and school counselors. Will the proposed amendments do anything to address this confusion and provide guidelines about the specific roles of such professionals within schools?

DEPARTMENT RESPONSE:

See Responses to Comments #3 and 9.

14. COMMENT:

School counselors play a critical part in the social/emotional development of youth. Our days are filled with activities that support these aims, including mandated and at-risk counseling, classroom guidance lessons, crisis intervention and staff support, among others. The service we provide is tailored to the needs of the schools we serve and should not be curtailed or constricted by excessive impingement on our professional collaboration with our administrators.

DEPARTMENT RESPONSE:

The Department agrees that each school is unique and the particular design of the school counseling/guidance program should be tailored to the needs of each school, which is the purpose of requiring an advisory council and district-wide and building level plans. Therefore, no revisions are necessary.

15. COMMENT:

A few commenters continue to oppose the title “school counselor” in place of “guidance counselor” particularly as it applies to New York City and suggested the use of guidance counselor within NYC and school counselor outside of NYC.

DEPARTMENT RESPONSE:

The proposed amendment does not change the state licensure title, and was revised to explicitly provide that for the city school district of the City of New York and the city school district of the City of Buffalo school counselor shall include a licensed guidance counselor(s) pursuant to Part 80 of the Commissioner’s regulations. Therefore, this distinction is already clear and no revisions are necessary.

16. COMMENT:

Commenters opposed the Career and Teacher leader Education (CTLE) requirements because § 80-3.6 is not applicable to pupil personnel service certificate titles and is no longer in effect.

DEPARTMENT RESPONSE:

In light of the recent statutory amendments to Education Law § 3006-a, which only require CTLE for certain teachers and school leaders, the proposed amendment has been revised to remove such reference. However, Department staff will continue to engage the field in discussions around possible future professional development requirements for school counselors.

17. COMMENT:

Commenters opposed § 80-3.12 permitting school counselor interns to be supervised by individuals not certified as school counselors.

DEPARTMENT RESPONSE:

The Department agrees that school counselor interns should be supervised by certified school counselors. However, the regulation provides for flexibility in limited circumstances if the employing school district cannot provide a certified school counselor in the school building in which the internship occurs. Therefore, no revisions are necessary.

18. COMMENT:

Commenters were concerned that the administrative structure of the New York City Department of Education was not appropriately reflected. Commenter added that the regulations should include educational and administrative units in community schools, high schools, District 75 programs and District 79 programs.

DEPARTMENT RESPONSE:

The Department has amended the regulation to revert back to the previous language in recognition of the distinct administrative structure of the New York City Department of Education. However, it should be noted that

the creation of District 75 and District 79 programs are an administrative function of NYC DOE, and not explicitly defined in any other provision of the Commissioner’s regulations. However, the Department will develop guidance for the practical implementation within the various school districts around the state.

19. COMMENT:

The New York Association of School Psychologists appreciates the proposed revisions reflect the comments and concerns shares with the Department.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Eligibility for Participation in Interscholastic Sports and Duration of Competition

I.D. No. EDU-45-16-00006-RP

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

Proposed Action: Amendment of section 135.4(c)(7) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 803(not subdivided), 3204(2) and (3)

Subject: Eligibility for Participation in Interscholastic Sports and Duration of Competition.

Purpose: Eligibility for Participation in Interscholastic Sports and Duration of Competition.

Text of revised rule: 1. Subclause (4) of clause (a) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended by adding a new item (1), effective July 1, 2017 to read as follows:

(ii) Provisions for interschool athletic activities for pupils in grades 7 through 12. It shall be the duty of the trustees and boards of education to conduct interschool athletic competition for grades 7 through 12 in accordance with the following:

(a) Interscholastic athletic competition for pupils in junior high school grades seven, eight and nine. Such competition shall be conducted in accordance with the following: Seventh and eighth grade teams may participate only with teams of like grade groups, with the following exceptions:

(1) In junior high school, competition may include grades seven through nine.

(2) In six-year high schools, competition may include grades seven through nine.

(3) In four-year high schools, ninth grade pupils may participate in junior high competition.

(4) (i) A board of education may permit pupils in grades no lower than seventh to compete on any senior high school team, or permit senior high school pupils to compete on any teams in grades no lower than seventh, provided the pupils are placed at levels of competition appropriate to their physiological maturity, physical fitness and skills in relationship to other pupils on those teams in accordance with standards established by the commissioner.

(ii) *Nothing in this subclause shall prohibit a bona fide seventh or eighth grade student, as defined by subdivision (g) of section 135.1, who is regularly enrolled in a public school district organized for pupils in kindergarten through eighth grade that contracts with a neighboring school district or districts on a tuition basis for the education of its high school students pursuant to Education Law sections 2040 and 2045 and section 174.4 of this Title, from seeking to participate in a high school team, in accordance with the standards described in item (i) of this subclause, provided that the boards of education of the sending school district (as such term is defined in section 174.4(a)(1) of this Title) and the receiving school district(s) (as such term is defined in section 174.4(a)(2) of this Title) adopt a resolution to permit such participation. In the case of seventh and eighth grade students attending a public school district organized for pupils in kindergarten through eighth grade that contracts with more than one neighboring school district for the education of its high school students, any such seventh or eighth grade student who participates in high school athletics pursuant to this subclause may select only one high school in which to compete during their seventh and eighth grade participation; if, following participation in a high school team during seventh and/or eighth grade, such student chooses to attend a different high school with which the student’s kindergarten through eighth grade school district contracts for the education of its high school students, such student shall be ineligible to participate in any interscholastic athletic contest in a particular sport for a period of one year.*

2. Clause (b) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education shall be amended, effective July 1, 2017 to read as follows:

(b) Interscholastic athletic competition for pupils in senior high school grades 9, 10, 11 and 12. Inter-high school athletic competition shall be limited to competition between high school teams, composed of pupils in grades 9 to 12 inclusive, except as otherwise provided in subclause (a)(4) of this subparagraph. Such activities shall be conducted in accordance with the following:

(1) Duration of competition. A pupil shall be eligible for senior high school athletic competition in a sport during each of four consecutive seasons of such sport commencing with the pupil's entry into the ninth grade and prior to graduation, except as otherwise provided in this subclause, or except as authorized by a waiver granted under clause (d) of this subparagraph to a student with a disability. If a board of education has adopted a policy, pursuant to subclause (a)(4) of this subparagraph, to permit pupils in the seventh and eighth grades to compete in senior high school athletic competition, such pupils shall be eligible for competition during five consecutive seasons of a sport commencing with the pupil's entry into the eighth grade, or six consecutive seasons of a sport commencing with the pupil's entry into the seventh grade. A pupil enters competition in a given year when the pupil is a member of the team in the sport involved, and that team has completed at least one contest. A pupil shall be eligible for interschool competition in grades 9, 10, 11 and 12 until the last day of the school year in which he or she attains the age of 19, except as otherwise provided in subclause (a)(4) or clause (d) of this subparagraph, or in this subclause. The eligibility for competition of a pupil who has not attained the age of 19 years prior to July 1st may be extended under the following circumstances.

(i) If sufficient evidence is presented by the chief school officer to the section to show that the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, [or] accident, *documented social/emotional condition, or documented social/emotional circumstances beyond the control of the pupil*, such pupil's eligibility shall be extended accordingly in that sport. In order to be deemed sufficient, the evidence must [include documentation showing that as a direct result of the illness or accident, the pupil will be required to attend school for one or more additional semesters in order to graduate] *demonstrate that: (a) the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, accident, documented social/emotional condition or documented social/emotional circumstances beyond the control of the pupil; (b) as a direct result of such circumstances the pupil is required to attend school for one or more additional semesters in order to graduate; and (c) such participation would not have a significant adverse effect upon the opportunity of other pupils to participate successfully in interschool competition in the sport. However, nothing herein shall be construed to extend a student's eligibility beyond the age of 19, except as provided in (d) of subparagraph (ii) of this paragraph.*

(ii) If the chief school officer demonstrates to the satisfaction of the section that the pupil's failure to enter competition during one or more seasons of a sport is caused by such pupil's enrollment in a national or international student exchange program or foreign study program, that as a result of such enrollment the pupil will be required to attend school for one or more additional semesters in order to graduate, and that the pupil did not enter competition in any sport while enrolled in such program, such pupil's eligibility shall be extended accordingly in such sport.

(iii) *If the section declines to extend the pupil's eligibility in accordance with this subclause, the section shall provide written notice of such determination to the chief school officer, with a copy to the pupil's parent, guardian or person in parental relation. Such notice shall include, as applicable: information regarding the athletic association's internal appeal process, including the name of the individual and address to which such appeal is to be directed; or a statement that the determination may be appealed to the Commissioner of Education, in accordance with Education Law section 310, within 30 days of the date of such determination and shall include the name and address of the section official upon whom such appeal shall be served. If the athletic association hears and denies an appeal, written notice of the determination shall be provided to the chief school officer, with a copy to the pupil's parent, guardian or person in parental relation. Such notice shall include a statement that the determination may be appealed to the Commissioner of Education, in accordance with Education Law, section 310, within 30 days of the date of such determination and shall include the name and address of the athletic association official upon whom such appeal shall be served.*

Revised rule compared with proposed rule: Substantial revisions were made in section 135.4(c)(7)(ii).

Text of revised proposed 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

Data, views or arguments may be submitted to: Angelica Infante-Green, Deputy Commissioner for P12 Instructional Support, New York State Education Department, 2M West, Albany, NY 12234, (518) 474-5510, email: regcomments@nysed.gov

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

Revised Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 charges the Department with the general management and supervision of public schools and the educational work of the State.

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

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

Education Law section 803 provides the Board of Regents with overall authority over physical education instruction in schools.

Education Law section 3204(2) and (3) relate to compulsory education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to the age and four-year duration of competition limitations for athletic competition and the athletic placement process which provides a protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

3. NEEDS AND BENEFITS:

Commissioner's regulation § 135.4(c)(7)(ii) establishes the parameters for participation in interscholastic athletic competition for students in grades 7-12. The underlying spirit of Commissioner's regulations governing interscholastic athletics is to provide for the safety and equal opportunity for participation for public school students. These principles guide athletic eligibility determinations for students in seventh or eighth grade who wish to participate in high school athletics pursuant to the athletic placement process (8 NYCRR § 135.4(c)(7)(ii)(a)); as well as for purposes of mixed competition (8 NYCRR § 135.4(c)(7)(ii)(c)); and for students with disabilities who wish to extend eligibility to participate in non-contact sports (8 NYCRR § 135.4(c)(7)(ii)(d)).

Athletic Placement Process

In general, interscholastic athletics for students in grades 7-12 must be organized for students in like grade groups. However, pursuant to § 135.4(c)(7)(ii)(a), a school district may choose to permit certain students to compete at a level of competition deemed appropriate to their physiological maturity, physical fitness, and skill level in relationship to other students at the desired level of competition.

The standards by which such participation is permitted are commonly referred to as the Athletic Placement Process (APP). The APP, last updated in 2015, provides a protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level. Such protocol ensures that student athletes are able to participate safely at an appropriate level of competition based upon physical and emotional readiness and athletic ability, rather than age and grade alone.

Though not required, many school districts throughout the State employ the APP to provide appropriate interscholastic athletic opportunities for exceptional student athletes in grades 7 and 8 to play at the high school level. Existing regulations provide that to be eligible for participation in interscholastic athletic competition at any level during a semester, the student must, among other things, be a bona fide student, enrolled during the first 15 school days of such semester (8 NYCRR § 135.4[c][7][ii][b][2]). Commissioner's regulation § 135.1 defines a bona fide student as "a regularly enrolled student who is taking sufficient subjects to make an aggregate amount of three courses and who satisfies the physical education requirement."

Not all of the State's 728 school districts are traditional K-12 districts. Presently, there are 13 public school districts in the State that operate to serve students in grades K-8 only, and contract for the education of their high school students with other public school districts pursuant to the provisions of Education Law §§ 2040, 2045 and Commissioner's regulation § 174.4. Because of their unique configuration, these 13 public school districts do not have their own "district high school," and as a result, questions have arisen regarding the ability of students who are enrolled in K-8 public school districts to participate in the APP because they are not "enrolled" in a district with its own high school.

The proposed regulation is therefore designed to clarify the conditions under which K-8 public school districts may employ the APP protocol to allow the opportunity for exceptional student athletes to participate in interscholastic sports at the high school(s) with which the K-8 school district contracts for the education of its high school students, when such students are bona fide students of the K-8 school district. However, in an effort to avoid recruitment or other efforts to entice middle-school students to play for a specific high school, the regulation provides for a year of ineligibility if, following participation on a high school team pursuant to APP, the student chooses to attend a different high school with which the K-8 district contracts for the 9th grade year.

The existing guidance relating to the APP protocol is comprehensive. However, additional revisions will be necessary to provide these few K-8 school districts and the districts with which they contract for the education of their high school students with the necessary guidance to safely and appropriately implement the APP, if they choose.

Duration of Competition

Commissioner's regulation § 135.4(c)(7)(ii)(b)(1)(i), relating to the duration of competition, limits the participation of students in high school athletic competition to four consecutive seasons commencing with the student's entry into the ninth grade and prior to graduation. However, the regulation provides that a request for an extension of duration of competition may be granted if sufficient evidence demonstrates that the student's failure to enter competition during one or more seasons was directly caused by illness or accident, and such illness or accident will require the student to attend school for one or more additional semesters to graduate.

Prior to October 2014, this regulation also allowed students to seek an extension of eligibility when the student failed to enter competition for "other circumstances beyond the control of the student." In response to confusion from the field, the Board of Regents amended the regulation to limit the eligibility extension for reasons only related to accident or illness. However, recent events have highlighted need for even greater clarity. Recognizing that extenuating circumstances may exist which do not neatly fit into the categories of accident or illness, but may still be suitable for extending a student's athletic eligibility, the Department proposes additional revisions to specify two additional situations which may warrant extension of eligibility.

Following the public comment period, the Department proposes the following revisions to the proposed amendment which are intended to provide greater clarity and to ensure safe and equitable interscholastic athletic competition for all public school students.

Commissioner's Regulation § 135.4(c)(7)(ii)(b)(1)(i) Duration of Competition

- If sufficient evidence is presented by the chief school officer to the section to show that the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, [or] accident, *or documented social/emotional condition or documented social/emotional circumstances beyond the control of the pupil* such pupil's eligibility shall be extended accordingly in that sport...

- o This additional language seeks to further clarify the circumstances under which an eligibility extension may be granted. The Department received feedback that the initial proposed language, which simply included "other circumstances beyond the control of the pupil," was too vague and may cause confusion in the field.

- In order to be deemed sufficient, the evidence must [include documentation showing that as a direct result of the illness or accident, the pupil will be required to attend school for one or more additional semesters in order to graduate] *demonstrate that, (a) the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, accident, documented social/emotional condition or documented social/emotional circumstances beyond the control of the pupil; (b) as a direct result of such circumstances the pupil is required to attend school for one or more additional semesters in order to graduate; and (c) such participation would not have a significant adverse effect upon the opportunity of other pupils to participate successfully in interschool competition in the sport. However, nothing herein shall be construed to extend a student's eligibility beyond the age of 19, except as provided in clause (d) of this subparagraph.*

- o The Department received feedback that the initial proposed language would be burdensome for superintendents and athletic association officials in making determinations that a student's participation would not place the safety of the pupil or others at risk; and that the pupil will not hold an unfair advantage in the competition. However, because determinations regarding whether participation *would not have a significant adverse effect upon the opportunity of other pupils to participate successfully in interschool competition in the sport* are presently made in the context of male and female pupils in interscholastic athletic teams, the Department has revised the amendment to mirror such language.

- Additional language relating the appeal procedures was also removed from the proposed amendments as duplicative and unnecessary.

4. COSTS:

- (a) Costs to State government: none.
- (b) Costs to local government: none.
- (c) Costs to private regulated parties: none.
- (d) Costs to the regulating agency for implementation and administration of this rule: none.

The proposed amendment does not impose any costs on the State, local governments, private regulated parties or the State Education Department, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness, accident or circumstances beyond the control of the pupil and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment merely clarifies when a student's eligibility for senior high school athletic competition may be extended for additional and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

6. PAPERWORK:

This proposed amendment does not impose any additional paperwork requirements. The proposed amendment merely clarifies when a student's eligibility for senior high school athletic competition may be extended and for the utilization of the APP for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment is necessary to clarify when a student's eligibility for senior high school athletic competition may be extended and for the utilization of the APP for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level. There were no significant alternatives considered.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date. This proposed amendment does not impose any costs or compliance requirements, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended and for the utilization of the APP for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

Revised Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment merely clarifies when a student's eligibility for senior high school athletic competition may be extended and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

Commissioner's regulation § 135.4(c)(7)(ii) establishes the parameters for participation in interscholastic athletic competition for students in grades 7-12. The underlying spirit of Commissioner's regulations governing interscholastic athletics is to provide for the safety and equal opportunity for participation for public school students. These principles guide athletic eligibility determinations for students in seventh or eighth

grade who wish to participate in high school athletics pursuant to the athletic placement process (8 NYCRR § 135.4(c)(7)(ii)(a)); as well as for purposes of mixed competition (8 NYCRR § 135.4(c)(7)(ii)(c)); and for students with disabilities who wish to extend eligibility to participate in non-contact sports (8 NYCRR § 135.4(c)(7)(ii)(d)).

Athletic Placement Process

In general, interscholastic athletics for students in grades 7-12 must be organized for students in like grade groups. However, pursuant to § 135.4(c)(7)(ii)(a), a school district may choose to permit certain students to compete at a level of competition deemed appropriate to their physiological maturity, physical fitness, and skill level in relationship to other students at the desired level of competition.

The standards by which such participation is permitted are commonly referred to as the Athletic Placement Process (APP). The APP, last updated in 2015, provides a protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level. Such protocol ensures that student athletes are able to participate safely at an appropriate level of competition based upon physical and emotional readiness and athletic ability, rather than age and grade alone.

Though not required, many school districts throughout the State employ the APP to provide appropriate interscholastic athletic opportunities for exceptional student athletes in grades 7 and 8 to play at the high school level. Existing regulations provide that to be eligible for participation in interscholastic athletic competition at any level during a semester, the student must, among other things, be a bona fide student, enrolled during the first 15 school days of such semester (8 NYCRR § 135.4(c)[7][ii][b][2]). Commissioner's regulation § 135.1 defines a bona fide student as "a regularly enrolled student who is taking sufficient subjects to make an aggregate amount of three courses and who satisfies the physical education requirement."

Not all of the State's 728 school districts are traditional K-12 districts. Presently, there are 13 public school districts in the State that operate to serve students in grades K-8 only, and contract for the education of their high school students with other public school districts pursuant to the provisions of Education Law §§ 2040, 2045 and Commissioner's regulation § 174.4. Because of their unique configuration, these 13 public school districts do not have their own "district high school," and as a result, questions have arisen regarding the ability of students who are enrolled in K-8 public school districts to participate in the APP because they are not "enrolled" in a district with its own high school.

The proposed regulation is therefore designed to clarify the conditions under which K-8 public school districts may employ the APP protocol to allow the opportunity for exceptional student athletes to participate in interscholastic sports at the high school(s) with which the K-8 school district contracts for the education of its high school students, when such students are bona fide students of the K-8 school district. However, in an effort to avoid recruitment or other efforts to entice middle-school students to play for a specific high school, the regulation provides for a year of ineligibility if, following participation on a high school team pursuant to APP, the student chooses to attend a different high school with which the K-8 district contracts for the 9th grade year.

The existing guidance relating to the APP protocol is comprehensive. However, additional revisions will be necessary to provide these few K-8 school districts and the districts with which they contract for the education of their high school students with the necessary guidance to safely and appropriately implement the APP, if they choose.

Duration of Competition

Commissioner's regulation § 135.4(c)(7)(ii)(b)(1)(i), relating to the duration of competition, limits the participation of students in high school athletic competition to four consecutive seasons commencing with the student's entry into the ninth grade and prior to graduation. However, the regulation provides that a request for an extension of duration of competition may be granted if sufficient evidence demonstrates that the student's failure to enter competition during one or more seasons was directly caused by illness or accident, and such illness or accident will require the student to attend school for one or more additional semesters to graduate.

Prior to October 2014, this regulation also allowed students to seek an extension of eligibility when the student failed to enter competition for "other circumstances beyond the control of the student." In response to confusion from the field, the Board of Regents amended the regulation to limit the eligibility extension for reasons only related to accident or illness. However, recent events have highlighted need for even greater clarity. Recognizing that extenuating circumstances may exist which do not neatly fit into the categories of accident or illness, but may still be suitable for extending a student's athletic eligibility, the Department proposes additional revisions to specify two additional situations which may warrant extension of eligibility.

Following the public comment period, the Department proposes the following revisions to the proposed amendment which are intended to

provide greater clarity and to ensure safe and equitable interscholastic athletic competition for all public school students.

Commissioner's Regulation § 135.4(c)(7)(ii)(b)(1)(i) Duration of Competition

- If sufficient evidence is presented by the chief school officer to the section to show that the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, [or] accident, or *documented social/emotional condition or documented social/emotional circumstances beyond the control of the pupil* such pupil's eligibility shall be extended accordingly in that sport...

- o This additional language seeks to further clarify the circumstances under which an eligibility extension may be granted. The Department received feedback that the initial proposed language, which simply included "other circumstances beyond the control of the pupil," was too vague and may cause confusion in the field.

- In order to be deemed sufficient, the evidence must [include documentation showing that as a direct result of the illness or accident, the pupil will be required to attend school for one or more additional semesters in order to graduate] *demonstrate that, (a) the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, accident, documented social/emotional condition or documented social/emotional circumstances beyond the control of the pupil; (b) as a direct result of such circumstances the pupil is required to attend school for one or more additional semesters in order to graduate; and (c) such participation would not have a significant adverse effect upon the opportunity of other pupils to participate successfully in interschool competition in the sport. However, nothing herein shall be construed to extend a student's eligibility beyond the age of 19, except as provided in clause (d) of this subparagraph.*

- o The Department received feedback that the initial proposed language would be burdensome for superintendents and athletic association officials in making determinations that a student's participation would not place the safety of the pupil or others at risk; and that the pupil will not hold an unfair advantage in the competition. However, because determinations regarding whether participation *would not have a significant adverse effect upon the opportunity of other pupils to participate successfully in interschool competition in the sport* are presently made in the context of male and female pupils in interscholastic athletic teams, the Department has revised the amendment to mirror such language.

- Additional language relating the appeal procedures was also removed from the proposed amendments as duplicative and unnecessary.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any costs, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any technological requirements or costs on school districts.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendments are intended to provide greater clarity and to ensure safe and equitable interscholastic athletic competition for all public school students.

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.

Revised Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on school districts in rural areas, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

Commissioner's regulation § 135.4(c)(7)(ii) establishes the parameters

for participation in interscholastic athletic competition for students in grades 7-12. The underlying spirit of Commissioner's regulations governing interscholastic athletics is to provide for the safety and equal opportunity for participation for public school students. These principles guide athletic eligibility determinations for students in seventh or eighth grade who wish to participate in high school athletics pursuant to the athletic placement process (8 NYCRR § 135.4(c)(7)(ii)(a)); as well as for purposes of mixed competition (8 NYCRR § 135.4(c)(7)(ii)(c)); and for students with disabilities who wish to extend eligibility to participate in non-contact sports (8 NYCRR § 135.4(c)(7)(ii)(d)).

Athletic Placement Process

In general, interscholastic athletics for students in grades 7-12 must be organized for students in like grade groups. However, pursuant to § 135.4(c)(7)(ii)(a), a school district may choose to permit certain students to compete at a level of competition deemed appropriate to their physiological maturity, physical fitness, and skill level in relationship to other students at the desired level of competition.

The standards by which such participation is permitted are commonly referred to as the Athletic Placement Process (APP). The APP, last updated in 2015, provides a protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level. Such protocol ensures that student athletes are able to participate safely at an appropriate level of competition based upon physical and emotional readiness and athletic ability, rather than age and grade alone.

Though not required, many school districts throughout the State employ the APP to provide appropriate interscholastic athletic opportunities for exceptional student athletes in grades 7 and 8 to play at the high school level. Existing regulations provide that to be eligible for participation in interscholastic athletic competition at any level during a semester, the student must, among other things, be a bona fide student, enrolled during the first 15 school days of such semester (8 NYCRR § 135.4[c][7][ii][b][2]). Commissioner's regulation § 135.1 defines a bona fide student as "a regularly enrolled student who is taking sufficient subjects to make an aggregate amount of three courses and who satisfies the physical education requirement."

Not all of the State's 728 school districts are traditional K-12 districts. Presently, there are 13 public school districts in the State that operate to serve students in grades K-8 only, and contract for the education of their high school students with other public school districts pursuant to the provisions of Education Law §§ 2040, 2045 and Commissioner's regulation § 174.4. Because of their unique configuration, these 13 public school districts do not have their own "district high school," and as a result, questions have arisen regarding the ability of students who are enrolled in K-8 public school districts to participate in the APP because they are not "enrolled" in a district with its own high school.

The proposed regulation is therefore designed to clarify the conditions under which K-8 public school districts may employ the APP protocol to allow the opportunity for exceptional student athletes to participate in interscholastic sports at the high school(s) with which the K-8 school district contracts for the education of its high school students, when such students are bona fide students of the K-8 school district. However, in an effort to avoid recruitment or other efforts to entice middle-school students to play for a specific high school, the regulation provides for a year of ineligibility if, following participation on a high school team pursuant to APP, the student chooses to attend a different high school with which the K-8 district contracts for the 9th grade year.

The existing guidance relating to the APP protocol is comprehensive. However, additional revisions will be necessary to provide these few K-8 school districts and the districts with which they contract for the education of their high school students with the necessary guidance to safely and appropriately implement the APP, if they choose.

Duration of Competition

Commissioner's regulation § 135.4(c)(7)(ii)(b)(1)(i), relating to the duration of competition, limits the participation of students in high school athletic competition to four consecutive seasons commencing with the student's entry into the ninth grade and prior to graduation. However, the regulation provides that a request for an extension of duration of competition may be granted if sufficient evidence demonstrates that the student's failure to enter competition during one or more seasons was directly caused by illness or accident, and such illness or accident will require the student to attend school for one or more additional semesters to graduate.

Prior to October 2014, this regulation also allowed students to seek an extension of eligibility when the student failed to enter competition for "other circumstances beyond the control of the student." In response to confusion from the field, the Board of Regents amended the regulation to limit the eligibility extension for reasons only related to accident or illness. However, recent events have highlighted need for even greater clarity. Recognizing that extenuating circumstances may exist which do not neatly fit into the categories of accident or illness, but may still be suitable for

extending a student's athletic eligibility, the Department proposes additional revisions to specify two additional situations which may warrant extension of eligibility.

Following the public comment period, the Department proposes the following revisions to the proposed amendment which are intended to provide greater clarity and to ensure safe and equitable interscholastic athletic competition for all public school students.

Commissioner's Regulation § 135.4(c)(7)(ii)(b)(1)(i) Duration of Competition

- If sufficient evidence is presented by the chief school officer to the section to show that the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, [or] *accident, or documented social/emotional condition or documented social/emotional circumstances beyond the control of the pupil* such pupil's eligibility shall be extended accordingly in that sport...

- o This additional language seeks to further clarify the circumstances under which an eligibility extension may be granted. The Department received feedback that the initial proposed language, which simply included "other circumstances beyond the control of the pupil," was too vague and may cause confusion in the field.

- In order to be deemed sufficient, the evidence must [include documentation showing that as a direct result of the illness or accident, the pupil will be required to attend school for one or more additional semesters in order to graduate] *demonstrate that, (a) the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, accident, documented social/emotional condition or documented social/emotional circumstances beyond the control of the pupil; (b) as a direct result of such circumstances the pupil is required to attend school for one or more additional semesters in order to graduate; and (c) such participation would not have a significant adverse effect upon the opportunity of other pupils to participate successfully in interschool competition in the sport. However, nothing herein shall be construed to extend a student's eligibility beyond the age of 19, except as provided in clause (d) of this subparagraph.*

- o The Department received feedback that the initial proposed language would be burdensome for superintendents and athletic association officials in making determinations that a student's participation would not place the safety of the pupil or others at risk; and that the pupil will not hold an unfair advantage in the competition. However, because determinations regarding whether participation *would not have a significant adverse effect upon the opportunity of other pupils to participate successfully in interschool competition in the sport* are presently made in the context of male and female pupils in interscholastic athletic teams, the Department has revised the amendment to mirror such language.

- Additional language relating the appeal procedures was also removed from the proposed amendments as duplicative and unnecessary.

3. COSTS:

The proposed amendment does not impose any costs on school districts in rural areas, but merely clarifies when a student's eligibility for senior high school athletic competition may be extended and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendments are intended to provide greater clarity around the athletic placement process and to ensure safe and equitable interscholastic athletic competition for all public school students, including those located in rural areas of this State. Therefore, no alternatives were considered.

5. RURAL AREA PARTICIPATION:

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

Revised Job Impact Statement

The proposed amendment clarifies when a student's eligibility for senior high school athletic competition may be extended for additional seasons for illness, accident, or documented social/emotional condition or documented social/emotional circumstances beyond the control of the pupil and for the utilization of the athletic placement process protocol for districts that choose to allow students in grades 7 and 8 to play at the high school level, or for students in grades 9-12 to participate at the middle school level.

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

Assessment of Public Comment

Below is a summary of the comments received since publication of a Notice of Proposed Rule Making in the State Register on November 9, 2016.

1. COMMENT:

Commenter enthusiastically supports the amendment stating that is in the best interest of exceptional student athletes who attend seventh or eighth grade in a K-8 school district. 7-8 grade students who attend K-8 school districts should be afforded the same opportunity for the APP. The current regulation is ambiguous and adversely affects gifted athletes seeking levels of safe training and competition commensurate with their outstanding physiological maturity and performance ability.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

2. COMMENT:

Commenter supports the amendment and eligibility limitations if following participation on a high school team, the student chooses to attend a different high school.

DEPARTMENT RESPONSE

No response necessary as the comment is supportive.

3. COMMENT:

Commenter seeks to permit 7-8 grade students who are residents of a K-8 school district, but who attend nonpublic schools, to be also be eligible for the APP.

DEPARTMENT RESPONSE:

The intended scope of this amendment is to clarify the conditions under which K-8 public school districts may employ the APP to allow exceptional student athletes to participate in interscholastic sports at the high school(s) with which the K-8 school district contracts for the education of its high school students, when such students are bona fide students of the K-8 school district. Therefore, this comment is outside the scope of the proposed amendment and no amendments are necessary.

4. COMMENT:

Commenter supports the amendment because today's regulation denies exceptional student athletes the opportunity to play at a challenging and competitive level. There are no such limits on students who excel academically.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

5. COMMENT:

NYSPHSAA's concerns can be addressed through collaboration among partner districts, and policies enacted to ensure compliance with the regulations.

DEPARTMENT RESPONSE:

The Department appreciates this supportive comment and understands that additional revisions to APP guidance will be necessary.

6. COMMENT:

Commenter supports the amendment because the bona fide students of the K-8 districts are at a disadvantage compared with their peers who are enrolled in the K-12 district.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

7. COMMENT:

A restrictive transfer policy enacted by the board of education will address recruitment concerns.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

8. COMMENT:

Commenters expressed concern that the proposed amendments would jeopardize student safety and equal opportunity for participation.

DEPARTMENT RESPONSE:

Commissioner's regulation § 135.4(c)(7)(ii) establishes the parameters for participation in interscholastic athletic competition for grades 7-12 and the underlying spirit is to provide for the safety and equal opportunity for participation for public school students. These principles guide athletic eligibility determinations for 7-8 students who wish to participate in high school athletics pursuant to APP (§ 135.4(c)(7)(ii)(a)); as well as for purposes of mixed competition (§ 135.4(c)(7)(ii)(c)); and for students with disabilities who wish to extend eligibility to participate in non-contact sports (§ 135.4(c)(7)(ii)(d)).

9. COMMENT:

Several commenters expressed concern because being a member of the "school district" is an integral and critical aspect of the APP.

DEPARTMENT RESPONSE:

The proposed amendments are designed to clarify the conditions under which K-8 public school districts may employ the APP to allow the opportunity for exceptional student athletes to participate in interscholastic sports at the high school(s) with which the K-8 school district contracts for the education of its high school students, when such students are bona fide students of the K-8 school district.

Presently, there are 13 public school districts in the State that operate to serve students in grades K-8 only, and contract for the education of their high school students with other public school districts pursuant to the provisions of Ed.L. §§ 2040, 2045 and § 174.4. The unique configuration of

these 13 public school districts without a "district high school," makes it impossible for these students to be enrolled in the district within which they will attend high school when they are in 7th or 8th grade. The amendment relates only to enabling bona fide students enrolled in a public K-8 district to participate in the APP only if the boards of education of the sending school district and the receiving school district(s) adopt a resolution to permit such participation. Therefore, because these student athletes are bona fide students of the public K-8 school district, the Department does not share this concern.

10. COMMENT:

Commenters asserted that some K-8 districts were permitted to use the APP on a case by case basis with no rationale or consistency. Commenter asserted that the majority of these "waivers" were provided to K-8 districts that have a contract with a "single" school district making the transition more traditional and like K-12 districts.

DEPARTMENT RESPONSE:

See Comment #9. Because of their unique configuration, these K-8 public school districts do not have their own "district high school," and as a result, questions have arisen regarding the ability of students who are enrolled in K-8 public school districts to participate in the APP because they are not "enrolled" in a district with its own high school. Additionally, Education Law § 2040 provides that school districts that do not maintain a home high school may contract for the education of its high school students with one or more school districts. Therefore, limiting the proposed amendments would be inconsistent with the authority provided by the statute. The proposed amendments also ensure that, where a district contracts with more than one neighboring school district, its 7th and 8th grade students may select only one high school in which to compete during their seventh and eighth grade participation. The proposed amendments also require that, if, following participation in a high school team during seventh and/or eighth grade, such student chooses to attend a different high school with which the student's K-8 school district contracts for the education of its high school students, such student shall be ineligible to participate in any interscholastic athletic contest in a particular sport for a period of one year.

11. COMMENT:

Commenters expressed concern and asked questions about the implementation of APP in K-8 districts.

DEPARTMENT RESPONSE:

See response to Comment #5.

12. COMMENT:

Commenter expressed support for the amendments and that indicated any implementation concerns could be easily resolved through cooperation between the K-8 and the high school districts.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

13. COMMENT:

Although K-8 school districts represent a small portion of districts, commenter expressed fears if K-8 students are granted the ability to go through the APP to participate at a school in which they are not a bona fide student, this will ultimately lead to other students (nonpublic, home-schooled etc.) requesting similar privileges.

DEPARTMENT RESPONSE:

The proposed amendment relates only to enabling bona fide students enrolled in a public K-8 school district to participate in the APP, and then only if the boards of education of the sending school district and the receiving school district(s) adopt a resolution to permit such participation. Therefore, because these student athletes are bona fide students of the public K-8 school district, the Department does not share this concern.

14. COMMENT:

Commenter supports the clear language which clearly limits the APP to K-8 public school students which provides public school students with the same opportunity currently enjoyed by public school students attending K-12 districts.

DEPARTMENT RESPONSE:

No response necessary as the comment is supportive.

15. COMMENT:

Commenters were concerned that other student might try to use the APP if their school district does not offer opportunities they wish to receive.

DEPARTMENT RESPONSE:

The proposed amendment is expressly limited to the APP as presently permitted by § 135.4(c)(7)(ii)(a)(4) and merely makes the APP available to bona fide 7-8 grade students who are regularly enrolled in a public school district organized for pupils in grades K-8 that contracts with a neighboring school district or districts on a tuition basis for the education of its high school students pursuant to Education Law §§ 2040 and 2045 and Commissioner's regulation § 174.4.

16. COMMENT:

Commenters opposed the one year period of ineligibility for a K-8

student who participates at the high school level and then transfers to a different high school with which the K-8 district contracts for 9th grade.

DEPARTMENT RESPONSE:

The Department believes this is an important safeguard to protect against concerns raised about improper recruitment activities in connection with the APP process for K-8 districts, within the applicable statutory authority of the Commissioner to promulgate regulations which govern interscholastic athletics.

17. COMMENT:

Commenter supports extended eligibility in limited circumstances with appropriate documentation.

DEPARTMENT RESPONSE:

No response is necessary as the comment is supportive.

18. COMMENT:

Commenters were concerned about the burden on superintendents which would require them to make individual assessments to determine whether a student's participation will result in an unfair advantage in competition and whether the safety of the pupil or others is not at risk.

DEPARTMENT RESPONSE:

See Comment # 8. In light of the concerns raised by the public comment, the Department has revised the regulation to condition the eligibility extension on the same standard used for mixed competition, a determination that such participation would not have a significant adverse effect upon the opportunity of other pupils to participate successfully in interschool athletic competition in the sport.

19. COMMENT:

Commenter expressed concern that the amendments may create inequities with respect to students who are deemed eligible and those who are not granted an extension. Specifically, that consideration of safety and opportunity for competition might allow a student who is not a talented player an extension but would not allow a student who is bigger and more skilled the same opportunity. Commenter seeks additional objective criteria.

DEPARTMENT RESPONSE:

See response to Comment #18. In response to public comment the Department has revised the amendment to further guide the circumstances under which an eligibility extension may be granted.

20. COMMENT:

Commenters oppose the amendments expressing concern that the proposal reverts to pre-2015 language.

DEPARTMENT RESPONSE:

The Department continuously reviews the impact of regulations and policy. As a result of such review, the Department proposed to amend the regulation to clarify and further define the circumstances under which extended eligibility may be granted.

21. COMMENT:

Commenters were concerned that the changes could result in litigation against districts that permit a student to participate and another student is injured by that student, or by students who are denied an extension of eligibility.

DEPARTMENT RESPONSE:

See Comment #18. To the extent that determinations relating to participation in interscholastic athletics are presently disputed, the proposed amendment makes no changes to the availability of the avenues for judicial or administrative review.

22. COMMENT:

Commenter suggested including a definition and criteria for which "other circumstances" might warrant an extension.

DEPARTMENT RESPONSE:

In response to public comment, the Department has revised the amendment to clarify and further define the circumstances under which extended eligibility may be granted. Furthermore, the Department anticipates issuing guidance relating to the implementation.

23. COMMENT:

Commenters were concerned about the role of the sections in determining eligibility. Specifically that recent amendments have helped make eligibility determinations consistent throughout the state.

DEPARTMENT RESPONSE:

See response to Comment #18. In response to public comment, the Department has revised the amendment to clarify and further define the circumstances under which extended eligibility may be granted.

24. COMMENT:

Commenters expressed concern about specifying the Commissioner's de novo review of the record in a challenge to an eligibility determination by a section or athletic association. Commenters believe that it conflicts with the legal standard of review used by the Commissioner in § 310 appeals. They are concerned that it puts schools, sections and NYSPHSAA in an unfair position of having to follow the Commissioner's regulations only to be overturned by the Commissioner, not because they made the "wrong" decision, but because the Commissioner would decide the case differently.

DEPARTMENT RESPONSE:

The Commissioner has always had, and continues to have, the authority to determine that a decision challenged pursuant to Education Law § 310 was not reasonable and to substitute his/her judgment (see e.g., Appeal of the Board of Education of the Byron-Bergen Central School District, 25 Ed Dept Rep 404, Decision No. 11,628 (1986); Appeal of Kraft, 24 id. 243, Decision No. 11,566 (1986)). Therefore, the phrase "de novo review" has been eliminated from the proposed amendments as unnecessary.

Niagara Falls Water Board

NOTICE OF ADOPTION**Adoption of Rates, Fees and Charges**

I.D. No. NFW-01-17-00001-A

Filing No. 176

Filing Date: 2017-03-10

Effective Date: 2017-03-10

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

Action taken: Amendment of sections 1950.8 and 1950.20 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1230-j

Subject: Adoption of rates, fees and charges.

Purpose: To eliminate the availability charge that is no longer necessary to operate, maintain and manage the system.

Text or summary was published in the January 4, 2017 issue of the Register, I.D. No. NFW-01-17-00001-EP.

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

Text of rule and any required statements and analyses may be obtained from: David V. Sanchez, Niagara Falls Water Board, c/o One Franklin Court, 181 Franklin Street, Buffalo, New York 14202-2448, (716) 855-3761, email: dsanchez@lotempioec.com

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

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

Office of Parks, Recreation and Historic Preservation

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Amendments to Regulations Governing Use of Boats and
Watercraft and Control of Invasive Aquatic Species**

I.D. No. PKR-13-17-00011-P

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

Proposed Action: This is a consensus rule making to amend section 377.1(i) and (j) of Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, section 3.09(8)

Subject: Amendments to regulations governing use of boats and watercraft and control of invasive aquatic species.

Purpose: To make general updates and technical amendments and to clarify permissible inflatable watercraft types.

Text of proposed rule: Title 9 NYCRR Part 377.1 (i) and (j) are amended to read as follows:

(i) *Use and operation of boats or watercraft.*

(1) As used in 377.1(i) and (j), the terms “boat or watercraft” mean any type of motorized or non-motorized boat, vessel, sailboat, sailboard, kiteboard, paddleboard, inflatable watercraft or any other device capable of being used as a means of transportation of persons or property on or through the water, and the terms “use” and “operation” include, but are not limited to, launching, beaching, docking, mooring or anchoring.

[The use, launching, beaching, docking, mooring or anchoring of a boat or watercraft used as a means of transportation on water.]

(1)2 No boat or watercraft shall be operated within a bathing or surfing area. For the purposes of the ninth park region only, a bathing or surfing area shall be deemed to include the water area adjacent to and within 1,000 feet of any bathing beach or surfing area on the Atlantic Ocean, Long Island Sound and the bays along the shores of Long Island.

(2)3 No boat or watercraft shall be operated at a speed greater than five miles per hour in any area designated as a boat basin or anchorage area.

(3)4 No boat or watercraft shall be operated at a speed greater than 12 miles per hour in those waters designated as the channel system within the ninth park region.

(4)5 Within those waters designated as the channel system within the ninth park region, no person shall permit a [vessel] boat or watercraft to be moored or anchored except at the edge of a channel and in no case shall a [vessel] boat or watercraft be moored to or anchored within 50 feet of a channel marker or so as to interfere with the full use of the channel.

(5)6 If any boat or watercraft shall burn, submerge or become disabled, such boat or watercraft shall be removed immediately by its owner or other person having custody thereof. If such boat or watercraft is not removed within 24 hours, the office may have it removed and charge the owner or other person having custody thereof with any expense incurred in relation thereto.

(6)7 No person shall operate a [vessel] boat or watercraft without having the exhaust from the engine run through a muffler so constructed and used as to muffle the noise of exhaust in a reasonable manner.

(8) All inflatable boats or inflatable watercraft must be multi-chambered and affixed with a manufacturer certification label stating the boat or watercraft was built to USCG standards, ISO standard 6185, or in accordance with small craft standards of Transport Canada.

(7) 9 Use and operation of [vessels] boats or watercraft in Allegany State Park.

(i) [Vessels] Boats or watercraft are permitted only in waters designated for [vessel] boat or watercraft operation.

(ii) [The use of inflatable vessels is prohibited.] The use of motorized [vessels] boats or watercraft is permitted in the Allegany Reservoir.

(iii) In the waters of Quaker Lake and Red House Lake, motorized [vessels] boats or watercraft utilizing electric motors of no more than five horsepower are permitted.

(8) Prior to launching, or attempting to launch a boat or watercraft from a boat launch site, a fishing access site, or any other site from which a boat or watercraft can be launched, or upon leaving such site, the operator shall:

(i) inspect the boat or watercraft for plants, aquatic life, animals, or parts thereof, which are visible, in, on, or attached to any part, including livewells and bilges; the motor, rudder, anchor or other appurtenants; any equipment or gear; or the trailer or any other device used to transport or launch the boat or watercraft that may come into contact with the waterbody; and

(ii) remove any plant, aquatic life or animal, or parts thereof, observed during inspection prior to launching or leaving the site and dispose of it in designated receptacles provided at the site, or if no such receptacle is provided dispose of it in such a manner to avoid contact of the material with the waterbody.

(9) (i) An operator of a boat or watercraft shall not arrive at a boat launch site, a fishing access site, or any other site from which a boat or watercraft can be launched into a waterbody, or leave such a site after exiting a waterbody, without having drained the boat or watercraft, including bilge areas, livewells, bait wells and ballast tanks.

(ii) An operator of a boat or watercraft shall drain the watercraft, including bilge areas, livewells, bait wells and ballast tanks at a distance

from the waterbody and in such a manner to avoid contact of the drainage with the waterbody.]

(10) Inspection, removal and drainage of potentially invasive species prior to launch and after retrieval. Prior to launching and after retrieving a boat or watercraft in or from a waterbody at a boat launch site, a fishing access site, or any other site from which a boat or watercraft can be launched, the operator of the boat or watercraft shall:

(i) inspect the boat or watercraft for any plant, aquatic life, animal, or parts thereof, which are visible, in, on, or attached to any part, including livewells and bilges, the motor, rudder, anchor or other appurtenants, any equipment or gear, or the trailer or any other device used to transport or launch the boat or watercraft that may come into contact with the waterbody;

(ii) remove any plant, aquatic life or animal, or parts thereof, observed during inspection and dispose of such material in designated receptacles provided at the site; or, if no such receptacle is provided, dispose of such material at a distance away from the waterbody and above any high water mark to avoid contact of the material with the waterbody; and

(iii) drain all water from the boat or watercraft, including bilge areas, livewells, bait wells and ballast tanks, at a distance from the waterbody and above any high water mark to avoid contact of the drainage with the waterbody.

(10)11 The provisions of paragraph[s] ([8]10) [and (9)] of this subdivision shall not apply to:

(i) plants not otherwise defined in law or regulation as invasive species affixed to or transported in a boat or watercraft for use as camouflage for hunting or wildlife viewing purposes;

(ii) bait, including baitfish, legally used on a waterbody and possessed consistent with all applicable laws and regulations;

(iii) the use of plants or animals for habitat restoration, weed control, scientific research, or other activity approved by the office, consistent with all applicable laws and regulations;

(iv) a dog or other companion animal as defined in section 350 of the Agriculture and Markets Law; or

(v) [legally taken game as defined in section 11-0103(2) of the Environmental Conservation Law or fish as defined in section 11-0103(1)(a).]

legally taken “game” and “fish” as defined, respectively, in sections 11-0103(2) and 11-0103(1)(a) of the Environmental Conservation Law.

(11)2 Notwithstanding paragraph (1) of this subdivision, the use of a paddleboard, windsurfing board or sailboard may be permitted within an area specifically designated for such activities, including a surfing area within the ninth park region. The use of a personal flotation device is required when paddleboarding, windsurfing or sailboarding.

(j) The towing of persons on waterskis or aquaplanes; the use of a surfboard, paddleboard, windsurfing board or sailboard. A surfboard must have securely fastened to it a tether not exceeding eight feet in length, the free end of which must be securely bound to either the ankle or waist of the surfer. A personal flotation device must be worn at all times when using a paddleboard, windsurfing board or sailboard, or as required by law when operating a boat or watercraft [used as a means of transportation on water].

Text of proposed rule and any required statements and analyses may be obtained from: Shari Calnero, Associate Counsel, NYS Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany NY 12238, (518) 486-2921, email: shari.calnero@parks.ny.gov

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

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

Consensus Rule Making Determination

The New York State Office of Parks, Recreation and Historic Preservation submits this proposal as a consensus rule making pursuant to SAPA § 202(1)(b)(i) having determined no person is likely to object to the rule as written. This proposal would make general updates and technical amendments and clarify existing rules by articulating a non-discretionary standard for inflatable watercraft.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. These amendments make only technical changes.

Public Service Commission

NOTICE OF ADOPTION

Remand Proceeding and Request for Refunds

I.D. No. PSC-07-15-00006-A

Filing Date: 2017-03-13

Effective Date: 2017-03-13

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

Action taken: On 3/9/17, the PSC adopted an order approving Independent Payphone Association of New York, Inc.'s (IPANY) request to initiate a remand proceeding and denying IPANY's request for refunds for Independent Payphone Provider complainants (IPPs).

Statutory authority: Public Service Law, sections 92 and 97

Subject: Remand proceeding and request for refunds.

Purpose: To approve IPANY's request to initiate a remand proceeding and deny IPANY's request for refunds for IPPs.

Substance of final rule: The Commission, on March 9, 2017, adopted an order approving Independent Payphone Association of New York, Inc.'s (IPANY) request to initiate a remand proceeding and denying IPANY's request for refunds for Independent Payphone Provider complainants, 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.

(15-C-0029SA1)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-19-16-00011-A

Filing Date: 2017-03-10

Effective Date: 2017-03-10

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

Action taken: On 3/9/17, the PSC adopted an order approving, with modifications, Orange and Rockland Utilities, Inc.'s (O&R) tariff amendments to Service Classification (SC) No. 4, contained in P.S.C. No. 3—Electricity.

Statutory authority: Public Service Law, section 66(12)

Subject: Tariff amendments.

Purpose: To approve O&R's tariff amendments to SC No. 4, contained in P.S.C. No. 3—Electricity.

Substance of final rule: The Commission, on March 9, 2017, adopted an order approving, with modifications, Orange and Rockland Utilities, Inc.'s tariff amendments to Service Classification No. 4 – Public Street Lighting - Company Owned, contained in P.S.C. No. 3 – Electricity, to incorporate additional Light Emitting Diode (LED) street lighting luminaires, 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-0226SA1)

NOTICE OF ADOPTION

Audit Implementation Plan

I.D. No. PSC-25-16-00008-A

Filing Date: 2017-03-10

Effective Date: 2017-03-10

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

Action taken: On 3/9/17, the PSC adopted an order approving New York State Electric and Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation's (RG&E) Audit Implementation Plan filed on May 20, 2016.

Statutory authority: Public Service Law, section 66(19)

Subject: Audit Implementation Plan.

Purpose: To approve NYSEG and RG&E's Audit Implementation Plan.

Substance of final rule: The Commission, on March 9, 2017, adopted an order approving New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation's Audit Implementation Plan filed on May 20, 2016, 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.

(13-M-0314SA4)

NOTICE OF ADOPTION

Audit Implementation Plan

I.D. No. PSC-25-16-00010-A

Filing Date: 2017-03-10

Effective Date: 2017-03-10

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

Action taken: On 3/9/17, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Edison) Audit Implementation Plan filed on May 20, 2016.

Statutory authority: Public Service Law, section 66(19)

Subject: Audit Implementation Plan.

Purpose: To approve Con Edison's Audit Implementation Plan.

Substance of final rule: The Commission, on March 9, 2017, adopted an order approving Consolidated Edison Company of New York, Inc.'s Audit Implementation Plan filed on May 20, 2016, 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.

(13-M-0314SA3)

NOTICE OF ADOPTION

Audit Implementation Plan**I.D. No.** PSC-25-16-00014-A**Filing Date:** 2017-03-10**Effective Date:** 2017-03-10

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

Action taken: On 3/9/17, the PSC adopted an order approving the National Grid companies' Audit Implementation Plan filed on May 20, 2016.

Statutory authority: Public Service Law, section 66(19)

Subject: Audit Implementation Plan.

Purpose: To approve the National Grid companies' Audit Implementation Plan.

Substance of final rule: The Commission, on March 9, 2017, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid, The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid's Audit Implementation Plan filed on May 20, 2016, 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.

(13-M-0314SA1)

NOTICE OF ADOPTION

Audit Implementation Plan**I.D. No.** PSC-25-16-00015-A**Filing Date:** 2017-03-10**Effective Date:** 2017-03-10

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

Action taken: On 3/9/17, the PSC adopted an order approving National Fuel Gas Distribution Corporation's (NFG) Audit Implementation Plan filed on May 20, 2016.

Statutory authority: Public Service Law, section 66(19)

Subject: Audit Implementation Plan.

Purpose: To approve NFG's Audit Implementation Plan.

Substance of final rule: The Commission, on March 9, 2017, adopted an order approving National Fuel Gas Distribution Corporation's Audit Implementation Plan filed on May 20, 2016, 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.

(13-M-0314SA5)

NOTICE OF ADOPTION

Audit Implementation Plan**I.D. No.** PSC-25-16-00016-A**Filing Date:** 2017-03-10**Effective Date:** 2017-03-10

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

Action taken: On 3/9/17, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s (O&R) Audit Implementation Plan filed on May 20, 2016.

Statutory authority: Public Service Law, section 66(19)

Subject: Audit Implementation Plan.

Purpose: To approve O&R's Audit Implementation Plan.

Substance of final rule: The Commission, on March 9, 2017, adopted an order approving Orange and Rockland Utilities, Inc.'s Audit Implementation Plan filed on May 20, 2016, 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.

(13-M-0314SA6)

NOTICE OF ADOPTION

Audit Implementation Plan**I.D. No.** PSC-25-16-00017-A**Filing Date:** 2017-03-10**Effective Date:** 2017-03-10

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

Action taken: On 3/9/17, the PSC adopted an order approving Central Hudson Gas and Electric Corporation's (Central Hudson) Audit Implementation Plan filed on May 20, 2016.

Statutory authority: Public Service Law, section 66(19)

Subject: Audit Implementation Plan.

Purpose: To approve Central Hudson's Audit Implementation Plan.

Substance of final rule: The Commission, on March 9, 2017, adopted an order approving Central Hudson Gas and Electric Corporation's Audit Implementation Plan filed on May 20, 2016, 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.

(13-M-0314SA2)

NOTICE OF ADOPTION

Initial Distributed System Implementation Plans**I.D. No.** PSC-32-16-00007-A**Filing Date:** 2017-03-09**Effective Date:** 2017-03-09

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

Action taken: On 3/9/17, the PSC adopted an order directing the Utilities to comply with the directives and guidance regarding a subset of matters raised about the Initial Distributed System Implementation Plans.

Statutory authority: Public Service Law, sections 5(1), (2), 65(1), 66(1), (2) and (3)

Subject: Initial Distributed System Implementation Plans.

Purpose: To provide for standard procedure in the development of transmission and distribution project justifications.

Substance of final rule: The Commission, on March 9, 2017, adopted an

order addressing a subset of matters raised regarding the Initial and Supplemental Distributed System Implementation Plans (DSIP) filed by Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation (the Utilities). In the Order, the Commission provided guidance with respect to: 1) hosting capacity, 2) interconnection portals, 3) non-wire alternatives, 4) aggregated customer data privacy, and, 5) energy storage. The Commission also directed the Utilities to complete the hosting capacity analysis for all circuits at and above 12kV by October 1, 2017; to dedicate adequate resources to this effort in order to ensure that Phase 1 is fully implemented by no later than October 1, 2017; and to file within 60 days of the issuance of the Order additional information and revised matrices clearly describing the Non-Wires Alternatives (NWA) Suitability Criteria, how it will be applied as a standard procedure in the development of transmission and distribution project justifications, and identifying all projects in their five year capital plans that meet the criteria and when a NWA solicitation will likely be issued for those projects, 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-M-0411SA1)

NOTICE OF ADOPTION

Energy Service Company (ESCO) Eligibility

I.D. No. PSC-40-16-00027-A

Filing Date: 2017-03-13

Effective Date: 2017-03-13

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

Action taken: On 3/9/17, the PSC adopted an order allowing Marathon Energy Corporation (Marathon) to continue to market to and enroll residential and non-residential customers contingent on not accepting enrollments completed by Atlantis Business Consulting (Atlantis).

Statutory authority: Public Service Law, sections 4, 65 and 66

Subject: Energy Service Company (ESCO) Eligibility.

Purpose: To allow Marathon to enroll customers contingent on not accepting enrollments by Atlantis.

Substance of final rule: The Commission, on March 9, 2017, adopted an order allowing Marathon Energy Corporation to continue to market to and enroll residential and non-residential customers contingent on not accepting enrollments completed by Atlantis Business Consulting, 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-M-0434SA1)

NOTICE OF ADOPTION

Energy Service Company (ESCO) Eligibility

I.D. No. PSC-40-16-00028-A

Filing Date: 2017-03-13

Effective Date: 2017-03-13

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

Action taken: On 3/9/17, the PSC adopted an order allowing ABC Energy, LLC (ABC Energy) to continue to market to and enroll residential and non-residential customers contingent on not accepting enrollments completed by Atlantis Business Consulting (Atlantis).

Statutory authority: Public Service Law, sections 4, 65 and 66

Subject: Energy Service Company (ESCO) Eligibility.

Purpose: To allow ABC Energy to enroll customers contingent on not accepting enrollments by Atlantis.

Substance of final rule: The Commission, on March 9, 2017, adopted an order allowing ABC Energy, LLC to continue to market to and enroll residential and non-residential customers contingent on not accepting enrollments completed by Atlantis Business Consulting, 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-M-0433SA1)

NOTICE OF ADOPTION

Request for Limited Waiver of Tariff Provisions

I.D. No. PSC-42-16-00010-A

Filing Date: 2017-03-13

Effective Date: 2017-03-13

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

Action taken: On 3/9/17, the PSC adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid's (KEDNY) petition requesting a limited waiver of its Service Class (SC) 18 tariff provision, contained in P.S.C. No. 12—Gas.

Statutory authority: Public Service Law, sections 65(1) and 66(12)

Subject: Request for limited waiver of tariff provisions.

Purpose: To approve KEDNY's petition requesting a limited waiver of its SC 18 tariff provision, contained in P.S.C. No. 12—Gas.

Substance of final rule: The Commission, on March 9, 2017, adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid's petition requesting a limited waiver of its Service Class 18 (Non-Core Transportation Service) tariff provision, contained in P.S.C. No. 12 – Gas, for interruptible gas service provided to SUNY Downstate Medical Center, 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-0505SA1)

NOTICE OF ADOPTION

Comments on Legal and Procedural Issues of the Audit Process

I.D. No. PSC-44-16-00016-A

Filing Date: 2017-03-10

Effective Date: 2017-03-10

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

Action taken: On 3/9/17, the PSC adopted an order addressing National Fuel Gas Distribution Corporation's (NFG) comments regarding legal and procedural issues of the audit process.

Statutory authority: Public Service Law, section 66(19)

Subject: Comments on legal and procedural issues of the audit process.

Purpose: To address NFG's comments on legal and procedural issues of the audit process.

Substance of final rule: The Commission, on March 9, 2017, adopted an order addressing National Fuel Gas Distribution Corporation's (NFG) comments regarding legal and procedural issues of the audit process. The Commission decided that the Overland Audit (Auditor) was conducted as a management and operations audit provided for in Public Service Law Section 66(19); that the Commission properly assessed the audit costs directly on the utilities; that an order directing the filing of plans does not bypass any requirements of the State Administrative Procedure Act (SAPA) or the New York State Constitution; that the Commission did not delegate its rule-making authority to the audit Staff or a consultant; that the preliminary substantive comments that NFG made to Overland in February 2015 were fully considered by both the Auditor and the Commission; and that the directives contained in the order satisfied all requirements of SAPA and due process, 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.

(13-M-0314SA7)

NOTICE OF ADOPTION

Transition from NEM to a VDER Phase One Tariff

I.D. No. PSC-44-16-00017-A

Filing Date: 2017-03-09

Effective Date: 2017-03-09

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

Action taken: On 3/9/17, the PSC adopted an order directing the Joint Utilities to file tariff leaves implementing the transition from net energy metering (NEM) to a Value of Distributed Energy Resources (VDER) Phase One Tariff.

Statutory authority: Public Service Law, sections 5(1)(a), (2), 65(1), (2), (3), (4), (5), 66(1), (12), (14), 66-j and 66-1

Subject: Transition from NEM to a VDER Phase One Tariff.

Purpose: To direct the Joint Utilities to file tariff leaves implementing the transition from NEM to a VDER Phase One Tariff.

Substance of final rule: The Commission, on March 9, 2017, adopted an order directing Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation to file tariff leaves implementing the transition from net energy metering to a Value of Distributed Energy Resources Phase One Tariff on not less than 5 days' notice, to become effective on April 1, 2017, 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.

(15-E-0751SA1)

NOTICE OF ADOPTION

Modifications to the Interconnection EAM Framework

I.D. No. PSC-45-16-00013-A

Filing Date: 2017-03-09

Effective Date: 2017-03-09

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

Action taken: On 3/9/17, the PSC adopted an order directing the Joint Utilities to make modifications to their Interconnection Survey Process and proposed Earnings Adjustment Mechanism (EAM), filed on September 2, 2016.

Statutory authority: Public Service Law, sections 4(1), 5(1), (2), 65 and 66(1)

Subject: Modifications to the Interconnection EAM Framework.

Purpose: To direct the Joint Utilities to make modifications to their Interconnection Survey Process and proposed EAM.

Substance of final rule: The Commission, on March 9, 2017, adopted an order directing Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation to make modifications to their Interconnection Survey Process and proposed Earnings Adjustment Mechanism, filed on September 2, 2016, 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-M-0429SA1)

NOTICE OF ADOPTION

CDG Membership Requirements

I.D. No. PSC-46-16-00009-A

Filing Date: 2017-03-13

Effective Date: 2017-03-13

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

Action taken: On 3/9/17, the PSC adopted an order approving the City of New York, et. al.'s (Petitioners) petition requesting a limited waiver of the ten member minimum requirement for Community Distributed Generation (CDG) projects.

Statutory authority: Public Service Law, sections 5(2), 66(1), 66-j and 66-1

Subject: CDG Membership Requirements.

Purpose: To approve the Petitioners' request for a limited waiver of the ten member minimum requirement for CDG projects.

Substance of final rule: The Commission, on March 9, 2017, adopted an order approving the City of New York, Solar One, GRID Alternatives, Natural Resources Defense Council, The Association for Energy Affordability, and Environmental Defense Fund's petition requesting a limited waiver of the ten member minimum requirement for Community Distributed Generation (CDG) projects, and directed Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation to file tariff revisions necessary to remove the ten member minimum requirement for CDG projects that are located on the site of a property serving multiple residential or non-residential customers, 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,

sion, 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.

(15-E-0082SA4)

NOTICE OF ADOPTION

Petition for Clarification Regarding Excess Credits Associated with CDG Projects

I.D. No. PSC-46-16-00011-A

Filing Date: 2017-03-09

Effective Date: 2017-03-09

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

Action taken: On 3/9/17, the PSC adopted an order approving SolarCity Corporation's (SolarCity) petition for clarification regarding excess credits associated with Community Distributed Generation (CDG) projects.

Statutory authority: Public Service Law, sections 5(2), 66(1), 66-j and 66-l

Subject: Petition for clarification regarding excess credits associated with CDG projects.

Purpose: To approve SolarCity's petition for clarification regarding excess credits associated with CDG projects.

Substance of final rule: The Commission, on March 9, 2017, adopted an order approving SolarCity Corporation's petition for clarification of how excess credits associated with Community Distributed Generation projects and held by project sponsors will be treated at the end of each annual period, 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.

(15-E-0082SA5)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-46-16-00016-A

Filing Date: 2017-03-10

Effective Date: 2017-03-10

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

Action taken: On 3/9/17, the PSC adopted an order approving, with modifications, Central Hudson Gas & Electric Corporation's (Central Hudson) tariff amendments to Service Classification (SC) No. 5 and No. 8, contained in P.S.C. No. 15—Electricity.

Statutory authority: Public Service Law, section 66(12)

Subject: Tariff amendments.

Purpose: To approve Central Hudson's tariff amendments to SC No. 5 and No. 8, contained in P.S.C. No. 15—Electricity.

Substance of final rule: The Commission, on March 9, 2017, adopted an order approving, with modifications, Central Hudson Gas & Electric Corporation's tariff amendments to Service Classification (SC) No. 5 – Area Lighting Service and No. 8 – Public Street Highway Lighting Rate A (Company Owned and Maintained), contained in P.S.C. No. 15 – Electricity, to establish new light emitting diode (LED) options, 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.

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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-0616SA1)

NOTICE OF ADOPTION

Supplemental Distributed System Implementation Plans

I.D. No. PSC-47-16-00015-A

Filing Date: 2017-03-09

Effective Date: 2017-03-09

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

Action taken: On 3/9/17, the PSC adopted an order directing the Utilities to comply with the directives and guidance regarding a subset of matters raised about the Supplemental Distributed System Implementation Plans.

Statutory authority: Public Service Law, sections 5(1), (2), 65(1), 66(1), (2) and (3)

Subject: Supplemental Distributed System Implementation Plans.

Purpose: To provide for standard procedure in the development of transmission and distribution project justifications.

Substance of final rule: The Commission, on March 9, 2017, adopted an order addressing a subset of matters raised regarding the Initial and Supplemental Distributed System Implementation Plans (DSIP) filed by Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation (the Utilities). In the Order, the Commission provided guidance with respect to: 1) hosting capacity, 2) interconnection portals, 3) non-wire alternatives, 4) aggregated customer data privacy, and 5) energy storage. The Commission also directed the Utilities to complete the hosting capacity analysis for all circuits at and above 12kV by October 1, 2017; to dedicate adequate resources to this effort in order to ensure that Phase 1 is fully implemented by no later than October 1, 2017; and to file within 60 days of the issuance of the Order additional information and revised matrices clearly describing the Non-Wires Alternatives (NWA) Suitability Criteria, how it will be applied as a standard procedure in the development of transmission and distribution project justifications, and identifying all projects in their five year capital plans that meet the criteria and when a NWA solicitation will likely be issued for those projects, 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-M-0411SA2)

NOTICE OF ADOPTION

Submetering of Electricity and Waiver of Energy Audit

I.D. No. PSC-52-16-00008-A

Filing Date: 2017-03-10

Effective Date: 2017-03-10

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

Action taken: On 3/9/17, the PSC adopted an order approving Lynn's Place Housing Development Fund Company, Inc.'s (Lynn's Place) notice of intent to submeter electricity at 1060 Rev. James A. Polite Avenue, Bronx, New York and granting a waiver of 16 NYCRR section 96.5(k)(3).

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Submetering of electricity and waiver of energy audit.

Purpose: To approve Lynn's Place notice of intent to submeter electricity and granting a waiver of energy audit.

Substance of final rule: The Commission, on March 9, 2017, adopted an order approving Lynn's Place Housing Development Fund Company, Inc.'s notice of intent to submeter electricity at 1060 Rev. James A. Polite Avenue, Bronx, New York, located in the service territory of Consolidated Edison Company of New York, Inc. and granting a waiver 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-0611SA1)

NOTICE OF ADOPTION

Utilities' Electric Emergency Response Plans

I.D. No. PSC-01-17-00019-A

Filing Date: 2017-03-13

Effective Date: 2017-03-13

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

Action taken: On 3/9/17, the PSC adopted an order approving New York State's six major electric utilities' (Utilities) amended Electric Emergency Response Plans, filed on December 15, 2016 and amended in February 2017, for implementation.

Statutory authority: Public Service Law, sections 5(1)(b), 66(21)(a) and (b)

Subject: Utilities' Electric Emergency Response Plans.

Purpose: To approve the Utilities' Electric Emergency Response Plans for implementation.

Substance of final rule: The Commission, on March 9, 2017, adopted an order approving Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Gas and Electric Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation's amended Electric Emergency Response Plans, filed on December 15, 2016 and amended in February 2017, for implementation, 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-0635SA1)

NOTICE OF ADOPTION

Energy Service Company (ESCO) Eligibility

I.D. No. PSC-01-17-00020-A

Filing Date: 2017-03-13

Effective Date: 2017-03-13

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

Action taken: On 3/9/17, the PSC adopted an order prohibiting Atlantic Power & Gas, LLC (AP&G) from marketing to and enrolling residential and non-residential customers.

Statutory authority: Public Service Law, sections 4, 65 and 66

Subject: Energy Service Company (ESCO) Eligibility.

Purpose: To prohibit AP&G from marketing to and enrolling residential and non-residential customers.

Substance of final rule: The Commission, on March 9, 2017, adopted an order prohibiting Atlantic Power & Gas, LLC from marketing to and enrolling residential and non-residential customers, 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-M-0618SA1)

NOTICE OF ADOPTION

Appointment of Temporary Operator

I.D. No. PSC-03-17-00002-A

Filing Date: 2017-03-09

Effective Date: 2017-03-09

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

Action taken: On 3/9/17, the PSC adopted an order appointing New York American Water Company, Inc. (NYAW) as the temporary operator of Arbor Hills Waterworks, Inc. (Arbor Hills).

Statutory authority: Public Service Law, sections 89-b and 112-a

Subject: Appointment of temporary operator.

Purpose: To appoint NYAW as the temporary operator of Arbor Hills.

Substance of final rule: The Commission, on March 9, 2017, adopted an order appointing New York American Water Company, Inc. (NYAW) as the temporary operator of Arbor Hills Waterworks, Inc. (Arbor Hills), and directed Mr. Andrew Sferra, owner of Arbor Hills, to submit a written document to the Secretary to the Commission acknowledging receipt of this Order and confirming that he has or will expeditiously provide NYAW disbursing authority for all Arbor Hills bank accounts and escrow accounts and that he has or will expeditiously provide NYAW full and unfettered access to all Arbor Hills assets, including meters, real property and equipment, books and records, and any other Arbor Hills records or property needed to fulfill the purposes of this Order. To the extent any of these activities have not been effectuated within the 7 day period Mr. Sferra is directed to indicate dates by which all remaining activities will be completed, 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-W-0415SA3)

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

Rehearing of Commission's January 25, 2017 Order Approving Electric and Gas Rate Plans in Cases 16-E-0060 and 16-G-0061

I.D. No. PSC-13-17-00003-P

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

Proposed Action: The Commission is considering petitions by Digital Energy Corp and Northeast Clean Heat and Power Initiative seeking

rehearing in Cases 16-E-0060 and 16-G-0061 regarding Consolidated Edison Company of New York, Inc.'s electric and gas rate plans.

Statutory authority: Public Service Law, sections 22 and 66(1)

Subject: Rehearing of Commission's January 25, 2017 Order Approving Electric and Gas Rate Plans in Cases 16-E-0060 and 16-G-0061.

Purpose: To consider Petitions for Rehearing regarding certain metering costs as addressed in Cases 16-E-0060 and 16-G-0061.

Substance of proposed rule: The Public Service Commission is considering petitions for rehearing filed on February 24, 2017 by the Digital Energy Corp and on February 27, 2017 by the Northeast Clean Heat and Power Initiative. These petitions arise out of the Commission's January 25, 2017 Order Approving Electric and Gas Rate Plans for Consolidated Edison of New York, Inc. in Cases 16-E-0060 and 16-G-0061. The petitions seek review of the Commission's decision in that Order that assigned to standby customers the responsibility to furnish and install, at the customer's expense, the required revenue grade interval meter associated with the reliability credit described in the Order. The full text of the petitions may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. Upon conducting its evaluation of the petition, the Commission may reaffirm its initial decision or adhere to it with additional rationale in denying the petition, modify or reverse the decision in granting the petition in whole or in part, or take such other or further action as it deems necessary with respect to the petition. However, the Commission will limit its review to the issues raised by the above-referenced petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(16-E-0060SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity and Request for Waiver of Energy Audit

I.D. No. PSC-13-17-00004-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent of Seaview C Development, LLC to submeter electricity at 155-175 Friendship Lane, Staten Island, New York and the request for waiver of 16 NYCRR section 96.5(k)(3), requiring an energy audit.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Notice of Intent to submeter electricity and request for waiver of energy audit.

Purpose: To consider the Notice of Intent to submeter electricity and request for waiver of energy audit.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by Seaview C Development, LLC (Owner) on February 16, 2017, seeking authority to submeter electricity at 155-175 Friendship Lane, Staten Island, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission is also considering the Owner's request for a waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent or more of the residents receive income-based housing assistance. The full text of the Notice of Intent and waiver request 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-E-0098SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Certain Street Lighting Facilities Located in the City of Middletown

I.D. No. PSC-13-17-00005-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 Orange and Rockland Utilities, Inc. to transfer certain street lighting facilities, located in the City of Middletown, to the City of Middletown, New York.

Statutory authority: Public Service Law, sections 65, 66 and 70

Subject: Transfer of certain street lighting facilities located in the City of Middletown.

Purpose: To consider the transfer of certain street lighting facilities from Orange and Rockland Utilities, Inc. to City of Middletown.

Substance of proposed rule: The Public Service Commission is considering a petition, filed February 16, 2017, by Orange and Rockland Utilities, Inc. (Company) for authorization to transfer certain street lighting facilities (Facilities) to the City of Middletown, a New York municipal corporation. The Facilities consist of luminaries, lamps, mast arms, their associated wiring, electrical connections, and appurtenances. The purchase price for these Facilities is \$395,787, plus any accrued taxes as set forth in the agreement attached to the petition. The Company proposes to defer 100 percent of the net after-tax proceeds on the sale of the Facilities, plus accrued interest at the Commission-approved other customer provided capital rate, for the future benefit of the Company's electric customers. The full text of the petition may be reviewed online at the Department of Public Service webpage: 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-E-0111SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Rehearing of the Rate Plan Order

I.D. No. PSC-13-17-00007-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 the County of Rockland for rehearing of the Order Establishing Rate Plan for Suez Water New York Inc. (Rate Plan Order), issued on January 24, 2017.

Statutory authority: Public Service Law, sections 5, 22, 89-b and 89-c
Subject: Petition for rehearing of the Rate Plan Order.

Purpose: To consider the petition for rehearing of the Rate Plan Order.

Substance of proposed rule: The Public Service Commission is considering a petition filed by the County of Rockland, on February 23, 2017, requesting rehearing of the January 24, 2017 Order Establishing Rate Plan for Suez Water New York Inc. (Rate Plan Order), issued in Case 16-W-0130. Among other things, the County of Rockland alleges that the Rate Plan Order is founded on an error of law in that the Commission set rates based on invoices that do not conform to the Uniform System of Accounts and that the Commission committed an error of fact by concluding that Staff conducted a proper audit of Haverstraw Water Supply Project expenditures. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. Upon conducting its evaluation of the petition, the Commission may reaffirm its initial decision or adhere to it with additional rationale in denying the petition, modify or reverse the decision in granting the petition in whole or in part, or take such other or further action as it deems necessary with respect to the petition. However, the Commission will limit its review to the issues raised by the above-referenced petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(16-W-0130SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Rehearing of the Rate Plan Order

I.D. No. PSC-13-17-00008-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 a petition filed by the Municipal Consortium for rehearing of the Order Establishing Rate Plan for Suez Water New York Inc. (Rate Plan Order), issued on January 24, 2017.

Statutory authority: Public Service Law, sections 5, 22, 89-b and 89-c

Subject: Petition for rehearing of the Rate Plan Order.

Purpose: To consider the petition for rehearing of the Rate Plan Order.

Substance of proposed rule: The Public Service Commission is considering a petition filed by the Municipal Consortium, on February 23, 2017, requesting rehearing of the January 24, 2017 Order Establishing Rate Plan for Suez Water New York Inc. (Rate Plan Order), issued in Case 16-W-0130. Among other things, the Municipal Consortium alleges that the Rate Plan Order is founded on an error of law in that the Commission set rates based on invoices that do not conform to the Uniform System of Accounts and that the Commission committed an error of fact by concluding that Staff conducted a proper audit of Haverstraw Water Supply Project expenditures. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. Upon conducting its evaluation of the petition, the Commission may reaffirm its initial decision or adhere to it with additional rationale in denying the petition, modify or reverse the decision in granting the petition in whole or in part, or take such other or further action as it deems necessary with respect to the petition. However, the Commission will limit its review to the issues raised by the above-referenced petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess,

Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(16-W-0130SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Rehearing and Clarification of the Rate Plan Order

I.D. No. PSC-13-17-00009-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 the Public Utility Law Project for rehearing and clarification of the Order Establishing Rate Plan for Suez Water New York Inc. (Rate Plan Order), issued on January 24, 2017.

Statutory authority: Public Service Law, sections 5, 22, 89-b and 89-c

Subject: Petition for rehearing and clarification of the Rate Plan Order.

Purpose: To consider the petition for rehearing and clarification of the Rate Plan Order.

Substance of proposed rule: The Public Service Commission is considering a petition filed by the Public Utility Law Project (PULP), on February 24, 2017, requesting rehearing and clarification of the January 24, 2017 Order Establishing Rate Plan for Suez Water New York Inc. (Rate Plan Order), issued in Case 16-W-0130. Among other things, PULP alleges that the Rate Plan Order lacks clarity regarding the expected amount of conservation and further process; the Commission should reconsider recovery of post-Surcharge Order expenditures and the return that is allowed on Haverstraw Water Supply Project costs; the Commission committed errors of fact in response to Witness Kleinman's testimony; and erred with respect to the incentive mechanism, rate case expense, and translation of customer documents. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. Upon conducting its evaluation of the petition, the Commission may reaffirm its initial decision or adhere to it with additional rationale in denying the petition, modify or reverse the decision in granting the petition in whole or in part, or take such other or further action as it deems necessary with respect to the petition. However, the Commission will limit its review to the issues raised by the above-referenced petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(16-W-0130SP4)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rehearing of Commission's January 25, 2017 Order Approving Electric and Gas Rate Plans in Cases 16-E-0060 and 16-G-0061

I.D. No. PSC-13-17-00010-P

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

Proposed Action: The Commission is considering a petition by the Utility

Intervention Unit of the Department of State seeking rehearing in Cases 16-E-0060 and 16-G-0061 regarding Consolidated Edison Company of New York, Inc.'s electric and gas rate plans.

Statutory authority: Public Service Law, sections 22 and 66(1)

Subject: Rehearing of Commission's January 25, 2017 Order Approving Electric and Gas Rate Plans in Cases 16-E-0060 and 16-G-0061.

Purpose: To consider Petitions for Rehearing regarding certain metering costs as addressed in Cases 16-E-0060 and 16-G-0061.

Substance of proposed rule: The Public Service Commission is considering a petition for rehearing filed on February 24, 2017 by the Utility Intervention Unit of the Department of State. This petition arises out of the Commission's January 25, 2017 Order Approving Electric and Gas Rate Plans for Consolidated Edison Company and New York, Inc. in Cases 16-E-0060 and 16-G-0061. The petition seeks review of the Commission's decision in that Order to approve Consolidated Edison's treatment of certain transformer costs in the embedded cost of service study used for setting electric rates in these cases. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. Upon conducting its evaluation of the petition, the Commission may reaffirm its initial decision or adhere to it with additional rationale in denying the petition, modify or reverse the decision in granting the petition in whole or in part, or take such other or further action as it deems necessary with respect to the petition. However, the Commission will limit its review to the issues raised by the above-referenced petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(16-E-0060SP3)