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 Corrections and Community Supervision

NOTICE OF ADOPTION

Parole Board Decision Making

I.D. No. CCS-39-16-00004-A
Filing No. 772
Filing Date: 2017-09-12
Effective Date: 2017-09-27

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

Action taken: Amendment of sections 8002.1, 8002.2 and 8002.3 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 259-c(4), (11) and 259-i

Subject: Parole Board decision making.

Purpose: To clearly establish what the Board must consider when conducting an interview and rendering a decision.

Text of final rule: Sections 8002.1-8002.3 are repealed and new sections 8002.1-8002.3 are added to read as follows:

§ 8002.1 *Parole release interview.*

(a) Each inmate shall be scheduled for a parole release interview at least one month prior to the expiration of the minimum period of imprisonment or parole eligibility date as fixed by the Department of Corrections and Community Supervision, or upon such reconsideration date as previously set by the Board of Parole ("Board").

(b) The parole release interview shall be conducted by a panel of at least two members of the Board.

(c) The panel conducting the parole release interview shall discuss with the inmate each applicable factor set forth in section 8002.2 of this Part, excluding confidential information.

§ 8002.2 *Parole release decision-making.*

(a) Risk and Needs Principles: In making a release determination, the Board shall be guided by risk and needs principles, including the inmate's risk and needs scores as generated by a periodically-validated risk assessment instrument, if prepared by the Department of Corrections and Community Supervision (collectively, "Department Risk and Needs Assessment"). If a Board determination, denying release, departs from the Department Risk and Needs Assessment's scores, the Board shall specify any scale within the Department Risk and Needs Assessment from which it departed and provide an individualized reason for such departure. If other risk and need assessments or evaluations are prepared to assist in determining the inmate's treatment, release plan, or risk of reoffending, and such assessments or evaluations are made available for review at the time of the interview, the Board may consider these as well.

(b) Transitional accountability plan: The Board also shall consider the most current case plan that may have been developed by the New York State Department of Corrections and Community Supervision pursuant to Section 71-a of the Correction Law.

(c) Minor offenders: Guiding Principles. Minor offenders are inmates serving a maximum sentence of life imprisonment for a crime committed prior to the individual attaining 18 years of age.

1. When making any parole release decision pursuant to section 259-i(2)(c)(A) of the Executive Law for a minor offender, the Board shall, consider the following:

i. *The diminished culpability of youth; and*

ii. *Growth and maturity since the time of the commitment offense.*

2. Information presented that the hallmark features of youth were causative of, or contributing factors to, a minor offender's commitment offense, should not, in itself, be construed to demonstrate lack of insight or minimization of the minor offender's role in the commitment offense. The hallmark features of youth include immaturity, impetuosity, a failure to appreciate risks and consequences, and susceptibility to peer and familial pressures.

(d) Factors to be Considered in All Release Determinations: The Board shall consider the following factors in making a release determination:

(1) the institutional record, including program goals and accomplishments, academic achievements, vocational education training or work assignments, therapy and interactions with staff and inmates;

(2) performance, if any, as a participant in a temporary release program;

(3) release plans, including community resources, employment, education and training and support services available to the inmate;

(4) any deportation order issued by the Federal government against the inmate while in the custody of the Department of Corrections and Community Supervision and any recommendation regarding deportation made by the Commissioner of the Department of Corrections and Community Supervision pursuant to section 147 of the Correction Law;

(5) any statement made or submitted to the Board by the crime victim or the victim's representative, where the crime victim is deceased or is mentally or physically incapacitated;

(6) the length of the determinate sentence to which the inmate would be subject had he or she received a sentence pursuant to section 70.70 or section 70.71 of the Penal Law for a felony defined in article 220 or article 221 of the Penal Law;

(7) the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney and the attorney who represented the inmate in connection with the conviction for which the inmate is currently incarcerated, the pre-sentence probation report, as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to the inmate's current confinement; and

(8) prior criminal record, including the nature and pattern of the inmate's offenses, age at the time of commitment of any prior criminal offense, adjustment to any previous periods of probation, community supervision and institutional confinement.

§ 8002.3 Post-interview requirements and considerations.

(a) Granting of Release. If the Board grants the inmate release following its interview and deliberations, it shall impose the initial set of conditions that will govern his or her community supervision in accordance with the pertinent provisions of article 12-b of the Executive Law.

(b) Denial of Release. If parole is not granted, the inmate shall be informed in writing, within two weeks of his or her interview, of the decision denying him or her parole and the factors and reasons for such denial. Reasons for the denial of parole release shall be given in detail, and shall, in factually individualized and non-conclusory terms, address how the applicable parole decision-making principles and factors listed in 8002.2 were considered in the individual's case. The Board shall specify in its decision a date for reconsideration of the release decision and such date shall be not more than 24 months from the interview.

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 8002.2 and 8002.3.

Text of rule and any required statements and analyses may be obtained from: Kathleen M. Kiley, Counsel to the Board of Parole, Department of Corrections and Community Supervision, 1220 Washington Avenue, Building 2, Albany, New York 12226, (518) 473-5671, email: Rules@Doccs.ny.gov

Revised Regulatory Impact Statement

The Board of Parole has determined that the changes made to the last published rule are non-substantive and do not necessitate a revision of the original Regulatory Impact Statement published in the Notice of Proposed Rule Making.

Those changes made to the rule are summarized as follows:

Section 8002.2 of Title 9 of the NYCRR were changed to remove extraneous punctuation and to clarify certain code language regarding the factors and principles to be considered. Code language regarding the risk and needs assessment included in the risk and needs principles being the periodically validated assessment administered by DOCCS and language regarding information presented by the inmate regarding the hallmark features of youth in the context of minor offender consideration which some commenters found unclear. Additionally language regarding the transitional accountability plan created pursuant to Correction Law § 71-a, was moved into its own subdivision and the subdivisions were renumbered accordingly.

Section 8002.3(b) of Title 9 of the NYCRR was changed to clarify code language regarding the board decision requirements applying to all factors and principles described in Section 8002.2.

Revised Regulatory Flexibility Analysis

A Revised Regulatory Flexibility Analysis for Small Business and Local Government is not being submitted with this notice, as the changes made to the previously published rule text provide clarification as to the application of the proposed text and do not alter or increase any effect of the rule upon small businesses or local governments. Small businesses and local governments have no role in the Parole Board's parole release decision-making function. The proposed rulemaking will only affect the Parole Board's decision-making practices for inmates confined in State correctional facilities.

Revised Rural Area Flexibility Analysis

A Revised Rural Area Flexibility Analysis is not being submitted with this notice as the changes made to the previously published rule text provide clarification as to the application of the proposed text and do not alter or increase any effect of the rule upon rural areas. The proposed rules will only affect the Parole Board's decision-making practices for inmates confined in State correctional facilities.

Revised Job Impact Statement

A Revised Job Impact Statement is not being submitted with this notice, for the changes made to the previously published rule text provide clarification as to the application of the proposed text and will not have a substantial adverse impact on jobs and employment opportunities in New York State nor do the proposed rules impose any reporting, record keeping or other compliance requirements upon employers. The proposed rules only affect the decision-making practices of the Parole Board for inmates confined in State correctional facilities.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Following publication of the Board of Parole's ("Board") proposed rulemaking on September 28, 2016, the Board received in excess of 400 submissions, many including multiple individual comments, during the statutory 45 day comment period. The comments came from a wide cross-section of the public, including incarcerated individuals, families and friends of incarcerated individuals, advocacy and support organizations, bar associations, academics, attorneys, and elected officials. Following its consideration of the comments, the Board determined that non-substantial changes to the rules proposed by the September 28, 2016 Notice of Proposed Rule Making were warranted to provide clarification. During a regularly scheduled business meeting held on March 27, 2017 at which a quorum was present, the Board voted unanimously to adopt the rules as revised. Given the number of comments received, separately addressing the substance of each letter is not practical, particularly given the common themes, observations and suggestions contained in a majority of the comments; accordingly, the substance of the concerns raised are summarized and addressed below.

One of the primary concerns was that proposed Section 8002.2 misidentified the risk and needs assessment and "minor offender" status as "factors" to be considered in release determinations. The Board agrees these considerations are distinct from the statutory factors enumerated in Executive Law § 259-i(c)(A). Accordingly, the Board decided to clarify this by omitting "factor" from section 8002.2's heading, moving language relating to consideration of the case plan, which is required by Correction Law § 71-a, to a new subdivision (b) and renumbering the remaining subdivisions accordingly. Executive Law § 259-i(c)(A)'s factors now are contained in subdivision (d), which reiterates these factors must be considered in all release determinations consistent with the statutory parole scheme.

As for comments recommending retention of the Earned Eligibility Certificate standard or alteration of the standard in other cases, the Board cannot alter the standards applied in its decision making. Executive Law § 259-i(c)(A) provides that "[d]iscretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, and that his release is not incompatible with the welfare of society and will not so deprecate the seriousness of his crime as to undermine respect for law." Correction Law § 805 provides for release of inmates who have received a certificate of earned eligibility unless the Board determines "there is a reasonable probability that, if such inmate is released, he will not live and remain at liberty without violating the law and that his release is not compatible with the welfare of society." Although these standards are no longer repeated in the regulation, this in no way modifies the statutory mandate requiring their application. Thus, the Board declines to revise its rules to provide for standards different from what is provided under the laws of New York. These comments are addressed further below together with specific attention to each subdivision of the proposed regulation.

§ 8002.2(a): Risk and Needs Principles

Some comments expressed concern about proposed Section 8002.2(a)'s specific, or exclusive, reference to the COMPAS instrument as well as concerns that the language was too limiting to comply with Executive Law § 259-c(4). The Board has considered these comments and determined that minor changes would address these concerns by making explicit that the Board shall be guided by risk and needs principles; more specifically, "a periodically-validated risk assessment instrument", thus, replacing the term "COMPAS." Regarding the concern that the periodically-validated risk assessment instrument may not be applicable to some subsets of the inmate populations, the Board notes that the proposed regulation allows other risk and needs assessments or evaluations to be considered and any instrument used is not dispositive. As for the suggestion that a periodically-validated risk assessment instrument be prepared for juveniles in the custody of the New York State Office for Children and Family Services (OCFS), the Board has no authority over OCFS to implement this.

Many comments suggest creating a presumption in favor of release when scores on a periodically-validated risk assessment instrument are low. The creation of any such presumption is a legislative function and would conflict with the requirements of Executive Law § 259-i. The new regulation is also intended to increase transparency in the Board's decision making by providing an explanation when the Board departs from any scale in denying an inmate release. Additionally, the Board will state the reasons for denial in detailed, factually individualized and non-conclusory terms after applying the factors of Executive Law § 259-i. No further changes were made in response to these comments.

In response to concerns regarding the meaning of "departs from" scores on a periodically-validated risk assessment instrument, the Board has clarified that it will specify any scale within the assessment from which it departed that impacted its decision.

§ 8002.2(c): "Minor Offenders"

Many comments suggest the proposed regulation fails to incorporate the constitutionally required standard and procedural protections for minor offenders. Some argue youth is not simply a mitigating factor and the ap-

plicable standard must be whether the inmate has demonstrated "maturity and rehabilitation." Others argue consideration of the inmates' reduced culpability and subsequent maturation should outweigh the factors enumerated in statute. Yet, another suggests diminished culpability of youth is always a mitigating factor. Suggested procedural safeguards include, for example, representation by counsel at the Board interview. While the Board has clarified that age is not a statutory factor and moved this subdivision to confirm its distinct status as a principle informing the Board's consideration as a whole, the Board declines to make additional changes in response to these comments. The Board disagrees with the suggestion that State (or Federal) precedent abrogates the requirements of Executive Law § 259-i. The Board must consider the applicable statutory factors in every decision and has the discretion to weigh each factor as it deems appropriate. Consequently, the Board believes that the proposed regulations embody the spirit of applicable New York precedent by providing meaningful consideration of the diminished culpability of youth and the individual's growth and maturity since the time of the commitment offense, while also following the requirements of the Executive Law. The suggested procedures are not required by law, and, in some cases, fall outside the Board's authority. Additionally, it should be noted that since New York law establishes parole board release review as non-adversarial interviews, not contested hearings, there is no right to counsel.

Several comments contend proposed Section 8002.2(c)(2) is confusing and could lead to its application in a manner that undermines the paragraph. Several also suggest expanding "hallmark features of youth" or clarifying the list is not exhaustive. The Board agreed and clarified this language to ensure an inmate's presentation of information regarding their youth at the time of the offense will not be construed to demonstrate a lack of insight or the minimization of the instant offense. This does not preclude the Board from concluding that a minor offender has demonstrated a lack of insight or minimized the offense based on other information or observation. The Board also notes that the hallmark features of youth "includes" some characteristics, indicating the list is not exhaustive.

As for comments that suggest expanding the subdivision to encompass inmates who committed offenses before the age of 25 (or as youths generally) and without regard to sentence length as well as to discount disciplinary records based on youth, nothing in the Executive Law or in current State or Federal case law supports these comments. To the extent comments suggest this rulemaking address the incarcerated elderly population, nothing in the law requires advanced age to be a separate factor or consideration. Moreover, because medical parole, in some instances related to advanced age, is governed by Executive Law § 259-r and § 259-s, any regulations within this area must be in harmony with those statutory provisions.

§ 8002.2(d): Factors to be Considered

A recurring theme among comments is that the Board places too much emphasis on the nature of the crime without adequate consideration of other factors. Some suggest specificity as to how the factors are weighed, a requirement to "substantially" consider the factors, or the creation of presumptions in favor of release. A number of comments suggest the Board eliminate separate consideration of some (but not all) statutory factors addressed by a periodically-validated risk assessment instrument – namely, the instant offense, criminal history and disciplinary history. To the extent comments argue that the regulations should alter the requirement that the Board consider all applicable factors set forth in Executive Law § 259-i(c)(A) or require the Board to assign any particular weight to any factor, the Board disagrees as the statutes governing parole consideration remain unchanged. No rulemaking could alter the statutory standards for making discretionary release determinations or the requirement that the Board weigh the statutory factors in every determination. Accordingly, no changes were made in response to these comments.

§ 8002.3(b): Denial Decisions

Many comments suggest the regulations require the Board to state in writing what steps an inmate should take to improve their chances of parole in the future. An independent evaluation must be made by the Board each time an inmate appears before the Board based on the existing record and interview. The new regulations reinforce that detailed reasons must be articulated for denial of release. Accordingly, it is anticipated that future denial decisions will help inmates to better understand the decision and what more, if anything, they can do to facilitate a legally appropriate release.

To the extent comments suggest that reasons for denial must be premised upon factors that are "inherently correctible," this would conflict with the requirements of Executive Law § 259-i(c)(A) which delineates the factors which must be considered.

As for comments concerning reliance on official statements (i.e., statements from prosecutors, defense attorneys and the sentencing court) and victim impact statements, such statements, when they exist, are factors that must be considered.

Additional Submissions

The Board received numerous submissions on topics outside the scope of this rule making, including complaints about individual Board decisions, recommendations regarding particular release candidates, the appointment and training of Commissioners, and letters from inmates who have never appeared before the Board. As these submissions did not address the proposed rulemaking, no changes were made in response. However, where appropriate, these communications were directed to relevant parties for further action.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Temporary Release Program Rules and Regulations

I.D. No. CCS-39-17-00001-P

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

Proposed Action: Amendment of Parts 1900, 1902 and section 1926.3 of Title 7 NYCRR.

Statutory authority: Correction Law, sections 2, 112, 851, 852, 853 and 855

Subject: Temporary Release Program Rules and Regulations.

Purpose: To amend current regulations governing the temporary release program consistent with governing statutes and agency directives.

Substance of proposed rule (Full text is posted at the following State website: www.doccs.ny.gov/RulesRegs/index.html): The changes made to Parts 1900 and 1902, and Section 1926.3 of Title VII of the New York State Code Rules and Regulations are being made to reflect changes in the Correction Law regarding Temporary Release Programs as well as New York State Department of Corrections and Community Supervision departmental directives regarding Temporary Release Programs. Further the changes are made to effect consistency between the Department's current Temporary Release procedures and the governing regulations.

Text of proposed rule and any required statements and analyses may be obtained from: Kevin P. Bruen, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue, Harriman State Campus, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCCS.ny.gov

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

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

Regulatory Impact Statement

Statutory Authority: Correction Law sections 2, 112, 851, 852, 853 and 855, give the Commissioner superintendence, management and control of the correctional facilities in the Department and all matters related to the government thereof, as well as the management and control of all persons permitted to participate in a temporary release program and all matters related to assisting such persons' effective reentry into the community. Pursuant to Correction Law section 112, the Commissioner is authorized to make rules and regulation to carry-out these statutory responsibilities. Section 852 of the Correction Law requires the Commissioner ensure that the rules reflect the purposes of the different programs.

Legislative Objectives: To amend current regulations to reflect changes in the law and to increase the number of inmates accepted into the Temporary Release Program.

Needs and Benefits: The Department's adherence to Correction Law regarding Temporary Release Programs necessitates the review of the existing rules and regulations to ensure that the procedures reflect the purposes of the different programs including the eligibility criteria, procedures for applicants and supervision. The Temporary Release Programs provide inmates the opportunity to re-enter the communities prior to release from a state correctional facility. The programs educate, teach valuable job skills, allow inmates to be near a loved one prior to death and more importantly, allow a more gradual assimilation from prison life back into the community. Through this rulemaking the Department is incorporating recent legislative changes affecting the Department's Temporary Release Programs. In this regard the Department anticipates a stream-lined process that allows for a greater number of eligible inmates to have meaningful participation in such programs.

Costs:

(a) There are no additional costs to the Department of State. This proposed rulemaking imposes no costs on any other State or local agency.

(b) As the proposed rulemaking does not apply to private parties, no costs are imposed on private parties.

(c) This cost analysis is based on the Department's historical data and knowledge from implementing the program, including a review of final

decisions, reflects that a greater number of inmates may be approved for a benefit from Temporary Release programs participation.

Local Government Mandates: This rulemaking imposes no program, service, duty or responsibility on any county, city, town, village, school district, or other special district. It applies only to correctional facilities and any non-profit; for profit employer; or academic or vocational institutions who agree to participate in the Temporary Release Programming.

Paperwork: This rulemaking will not add any new reporting requirements, including forms or other paperwork. The forms and other paperwork associated with the Department's use of its Temporary Release Programs already exists.

Duplication: There is no overlap or conflict with any other legal requirements of the State or Federal government.

Alternatives: There are no alternatives, for the proposed rule changes reflect the most current and best practices used by the Department to effect the most efficient use of the Temporary Release Program where the greatest number of eligible participants can benefit from the program.

Federal Standards: There are no federal standards that apply to the proposed rulemaking.

Compliance Schedule: Compliance with the proposed rulemaking is expected upon its adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Government is not being submitted with this notice since the proposed rule changes will have no adverse impact upon small businesses or local governments, nor do the proposed rules impose any reporting, record keeping or other compliance requirements upon small businesses or local governments. Small businesses and local governments have no role in the Department's Temporary Release Programs. The proposed rules only affect the Department's administration of its current Temporary Release Programs for eligible inmates confined in state correctional facilities.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice since the proposed rules will have no adverse impact upon rural areas, nor do the proposed rules impose any reporting, record keeping or other compliance requirements upon rural areas. The proposed rules only affect the Department's administration of its current Temporary Release Programs for eligible inmates confined in state correctional facilities.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice since the proposed rules will have no adverse impact upon jobs or employment opportunities, nor do the proposed rules impose any reporting, record keeping or other compliance requirements upon employers. The proposed rules only affect the Department's administration of its current Temporary Release Programs for eligible inmates confined in state correctional facilities.

Education Department

EMERGENCY RULE MAKING

Academic Intervention Services

I.D. No. EDU-27-17-00010-E

Filing No. 773

Filing Date: 2017-09-12

Effective Date: 2017-09-18

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

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

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

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

Specific reasons underlying the finding of necessity: The proposed amendment to section 100.2(ee) of the Regulations of the Commissioner of Education is necessary to ensure school districts have sufficient notice of the amendments and are able to continuously implement them beginning with the 2017-2018 school year.

A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 5, 2017. It is anticipated that the rule will be adopted at the September 2017 Board of Regents meeting and become effective as a permanent rule on September 27, 2017, the date which the Notice of Adoption will be published in the State Register. However, the Emergency Adoption which was published in the State Register on July 5, 2017 will expire on September 17, 2017. In order to have these provisions continuously in effect until they can be adopted as a permanent rule, emergency action is therefore necessary for the preservation of general welfare to ensure that school districts have sufficient notice of the amendments and are able to continuously implement them beginning with the 2017-2018 school year which commenced on July 1, 2017.

Subject: Academic Intervention Services.

Purpose: To revise the methodology by which school districts shall identify students in grades 3 – 8 who receive AIS.

Text of emergency rule:

Paragraph (2) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is amended, as follows:

(2) Requirements for providing academic intervention services in grade three to grade eight.

(i) For the 2016-17*, 2017-18, and 2018-2019* school year*s*, schools shall provide academic intervention services following a two-step identification process:

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

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

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

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

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

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

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

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

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

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

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

(ii) Commencing with the [2017-18] *2019-20* school year and each school year thereafter, schools shall provide academic intervention services following a two-step identification process:

(a) First, all students performing at or below a certain scale score, established through a standard setting process conducted by the Department, on one or more of the State elementary assessments in English language arts or mathematics shall be considered for academic intervention services. The standard setting process shall include a panel of educators, including teachers, principals and other school personnel. Students scoring at or above the scale score established by the standard setting panel and approved by the Commissioner shall not be required to receive academic intervention services unless the school district, in its discretion, determines that such services are needed.

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

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

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

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

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

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

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

(c) Each school district shall develop and maintain its policies for providing academic services during the [2017-2018] *2019-2020* school year and each school year thereafter no later than September 1, [2017] *2019* and each September thereafter and shall either post its policies to its website or distribute to parents in writing a description of such process, including a description of which student performance measures and scores on such measures will be utilized to determine eligibility for academic intervention services.

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

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

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-27-17-00010-EP, Issue of July 5, 2017. The emergency rule will expire September 27, 2017.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 148, Albany, NY 12047, (518) 474-6400, email: legal@nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to continue the two-step identification process for students eligible for AIS, which includes identification of students who perform at or below a median cut point score between a Level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner for the 2017-2018 and 2018-2019 school years, and delays the standard setting process until the 2019-2020 school year to ensure accuracy and consistency among the assessments and the learning standards.

3. NEEDS AND BENEFITS:

In 2016, § 100.2(ee) was amended to change the methodology for identifying students in grades 3-8 to receive AIS through a two-step process. This two-step process includes an initial identification based on the student's performance on the State assessments in ELA or math, and a secondary district-developed procedure to review multiple measures of student performance. This regulatory amendment to include multiple measures of student performance to identify students in need of AIS was based upon recommendations from New York State educators and stakeholders, and was included as Recommendation #19 in the Governor's Common Core Task Force Report released in December 2015.

While the amendments requiring a two-step identification process and multiple measures of student performance were effective for the 2016-2017 school year, § 100.2(ee) was further amended to include a timeline for revisions to the AIS identification methodology that would be in effect beginning with the 2017-2018 school year. This required the Department to engage a panel of educators to conduct a standard setting process led by the Department to recommend the level of performance for the grades 3-8 ELA and mathematics assessments for which a student could be considered for AIS. Concurrently with the amendments to the AIS identification methodology, the Department was engaging, and continues to engage, stakeholders as the Board of Regents moves toward adopting the Next Generation English Language Arts and Mathematics Learning Standards. However, because such standards have not yet been adopted by the Board, and the corresponding assessments have yet to be developed, NYSED recommends delaying until the 2019-2020 school year the establishment of the standard setting panel to ensure appropriate alignment with the Next Generation English Language Arts and Mathematics Learning Standards.

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

In an effort to ensure that the standard setting process is meaningful within the context of the Next Generation English Language Arts and Mathematics Learning Standards, the Department is proposing to amend the regulation to continue the two-step identification process, which includes identification of students who perform at or below a median cut point score between a Level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner for the 2017-2018 and 2018-2019 school years, and delay the standard setting process until the 2019-2020 school year to ensure accuracy and consistency among the assessments and the learning standards.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local governments: None.

(c) Costs to private regulated parties: None.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments but merely continues the two-step identification process for students eligible for AIS, which includes identification of students who perform at or below a median cut point score between a Level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner for the 2017-2018 and 2018-2019 school years, and delays the standard setting process until the 2019-2020 school year to ensure accuracy and consistency among the assessments and the learning standards. The proposed amendment will not impose any additional compliance requirements but instead will allow for continued flexibility to school districts in identifying students eligible for AIS.

6. PAPERWORK:
The proposed amendment does not impose any new specific recordkeeping, reporting or other paperwork requirements.
7. DUPLICATION:
The proposed amendment does not duplicate existing State or federal regulations.
8. ALTERNATIVES:
There were no alternatives and none were considered.
9. FEDERAL STANDARDS:
There are no related federal standards.
10. COMPLIANCE SCHEDULE:
It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

(a) Small businesses:
The proposed amendment continues the two-step identification process for students eligible for AIS, which includes identification of students who perform at or below a median cut point score between a Level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner for the 2017-2018 and 2018-2019 school years, and delays the standard setting process until the 2019-2020 school year to ensure accuracy and consistency among the assessments and the learning standards. The proposed amendment will not impose any additional compliance requirements but instead will allow for continued flexibility to school districts in identifying students eligible for AIS. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.
(b) Local government:
The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments but merely continues the two-step identification process for students eligible for AIS, which includes identification of students who perform at or below a median cut point score between a Level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner for the 2017-2018 and 2018-2019 school years, and delays the standard setting process until the 2019-2020 school year to ensure accuracy and consistency among the assessments and the learning standards. The proposed amendment will not impose any additional compliance requirements but instead will allow for continued flexibility to school districts in identifying students eligible for AIS.
1. EFFECT OF RULE:
The proposed amendment applies to each of the 695 public school districts in the State.
2. COMPLIANCE REQUIREMENTS:
The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to continue the two-step identification process for students eligible for AIS, which includes identification of students who perform at or below a median cut point score between a Level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner for the 2017-2018 and 2018-2019 school years, and delays the standard setting process until the 2019-2020 school year to ensure accuracy and consistency among the assessments and the learning standards.
3. NEEDS AND BENEFITS:
In 2016, § 100.2(ee) was amended to change the methodology for identifying students in grades 3-8 to receive AIS through a two-step process. This two-step process includes an initial identification based on the student's performance on the State assessments in ELA or math, and a secondary district-developed procedure to review multiple measures of student performance. This regulatory amendment to include multiple measures of student performance to identify students in need of AIS was based upon recommendations from New York State educators and stakeholders, and was included as Recommendation #19 in the Governor's Common Core Task Force Report released in December 2015.
While the amendments requiring a two-step identification process and multiple measures of student performance were effective for the 2016-2017 school year, § 100.2(ee) was further amended to include a timeline for revisions to the AIS identification methodology that would be in effect beginning with the 2017-2018 school year. This required the Department to engage a panel of educators to conduct a standard setting process led by the Department to recommend the level of performance for the grades 3-8 ELA and mathematics assessments for which a student could be considered for AIS. Concurrently with the amendments to the AIS identification methodology, the Department was engaging, and continues to engage, stakeholders as the Board of Regents moves toward adopting the Next Generation English Language Arts and Mathematics Learning Standards. However, because such standards have not yet been adopted by the Board, and the corresponding assessments have yet to be developed, NYSED recommends delaying until the 2019-2020 school year the establishment of the standard setting panel to ensure appropriate alignment with the Next Generation English Language Arts and Mathematics Learning Standards.
As is currently the case, districts continue to have the flexibility to make a determination that a student who scores above the cut score for eligibility for AIS should receive this service. As is also currently the case, districts must by September 1 each year develop and maintain their policies for providing AIS and either post the district's policies to the district's website or distribute to parents in writing a description of such process, including a description of which student performance measures and scores on such measures will be utilized to determine eligibility for AIS.
In an effort to ensure that the standard setting process is meaningful within the context of the Next Generation English Language Arts and Mathematics Learning Standards, the Department is proposing to amend the regulation to continue the two-step identification process, which includes identification of students who perform at or below a median cut point score between a Level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner for the 2017-2018 and 2018-2019 school years, and delay the standard setting process until the 2019-2020 school year to ensure accuracy and consistency among the assessments and the learning standards.
4. PROFESSIONAL SERVICES:
The proposed amendment imposes no additional professional service requirements on school districts.
5. COMPLIANCE COSTS:
The proposed amendment does not impose any additional costs but merely continues the two-step identification process for students eligible for AIS, which includes identification of students who perform at or below a median cut point score between a Level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner for the 2017-2018 and 2018-2019 school years, and delays the standard setting process until the 2019-2020 school year to ensure accuracy and consistency among the assessments and the learning standards.
6. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:
The proposed rule does not impose any additional costs or technological requirements on local governments.
7. MINIMIZING ADVERSE IMPACT:
The proposed amendment is necessary to continue Regents policy to provide academic intervention services to students in need of such supports, as identified by multiple measures of student performance. This amended identification methodology will continue to provide flexibility to school districts in determining which measures of academic performance are valuable indicators of student need for academic intervention services while at the same time ensure that students who will be best served by academic intervention services will be eligible to receive such services.
8. LOCAL GOVERNMENT PARTICIPATION:
Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:
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:
In 2016, § 100.2(ee) was amended to change the methodology for identifying students in grades 3-8 to receive AIS through a two-step process. This two-step process includes an initial identification based on the student's performance on the State assessments in ELA or math, and a secondary district-developed procedure to review multiple measures of student performance. This regulatory amendment to include multiple measures of student performance to identify students in need of AIS was based upon recommendations from New York State educators and stakeholders, and was included as Recommendation #19 in the Governor's Common Core Task Force Report released in December 2015.
While the amendments requiring a two-step identification process and multiple measures of student performance were effective for the 2016-2017 school year, § 100.2(ee) was further amended to include a timeline for revisions to the AIS identification methodology that would be in effect beginning with the 2017-2018 school year. This required the Department to engage a panel of educators to conduct a standard setting process led by the Department to recommend the level of performance for the grades 3-8 ELA and mathematics assessments for which a student could be considered for AIS. Concurrently with the amendments to the AIS identification methodology, the Department was engaging, and continues to engage, stakeholders as the Board of Regents moves toward adopting the Next Generation English Language Arts and Mathematics Learning Standards.

However, because such standards have not yet been adopted by the Board, and the corresponding assessments have yet to be developed, NYSED recommends delaying until the 2019-2020 school year the establishment of the standard setting panel to ensure appropriate alignment with the Next Generation English Language Arts and Mathematics Learning Standards.

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

In an effort to ensure that the standard setting process is meaningful within the context of the Next Generation English Language Arts and Mathematics Learning Standards, the Department is proposing to amend the regulation to continue the two-step identification process, which includes identification of students who perform at or below a median cut point score between a Level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner for the 2017-2018 and 2018-2019 school years, and delay the standard setting process until the 2019-2020 school year to ensure accuracy and consistency among the assessments and the learning standards.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs but merely continues the two-step identification process for students eligible for AIS, which includes identification of students who perform at or below a median cut point score between a Level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner for the 2017-2018 and 2018-2019 school years, and delays the standard setting process until the 2019-2020 school year to ensure accuracy and consistency among the assessments and the learning standards.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs and is necessary to implement Regents policy to continue the two-step identification process for students eligible for AIS, which includes identification of students who perform at or below a median cut point score between a Level 2/partially proficient and a Level 3/proficient, as determined by the Commissioner for the 2017-2018 and 2018-2019 school years, and delay the standard setting process until the 2019-2020 school year to ensure accuracy and consistency among the assessments and the learning standards. The proposed amendment will not impose any additional compliance requirements but instead will allow for continued flexibility to school districts in identifying students eligible for AIS.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

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

Assessment of Public Comment

The agency received no public comment

EMERGENCY RULE MAKING

Local Assistance Plans and Focus Schools

I.D. No. EDU-27-17-00011-E

Filing No. 779

Filing Date: 2017-09-12

Effective Date: 2017-09-18

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

Action taken: Amendment of section 100.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), (20), 308(not subdivided), 309(not subdivided), 3713(1) and (2)

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

Specific reasons underlying the finding of necessity: The proposed amendment to section 100.18(g) of the Regulations of the Commissioner of Education is necessary to ensure school districts have sufficient notice of the amendments and are able to continuously implement them beginning with the 2017-2018 school year.

A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 5, 2017. It is anticipated that the rule will be adopted at the September 2017 Board of Regents meeting and become effective as a permanent rule on September 27, 2017, the date which the Notice of Adoption will be published in the State Register. However, the Emergency Adoption which was published in the State Register on July 5, 2017 will expire on September 17, 2017. In order to have the proposed amendment remain continuously in effect until they can be adopted as a permanent rule, emergency action is necessary for the preservation of general welfare. Emergency action is also needed to ensure that school districts have sufficient notice of the amendments and are able to continuously implement them beginning with the 2017-2018 school year which commenced on July 1, 2017.

Subject: Local Assistance Plans and Focus Schools.

Purpose: To remove the requirement that LAP and focus schools be identified using assessment results from 2015-2016 and thereafter.

Text of emergency rule: Subdivision (g) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective September 27, 2017, as follows:

(g) Differentiated accountability for schools and districts. Prior to the commencement of the 2012-2013 school year, the commissioner, based on the 2010-2011 school year results, shall designate focus districts, priority schools and focus charter schools. Prior to the commencement of the 2013-2014 school year, based on the 2011-2012 school year results, and each year thereafter *up through and including the 2016-2017 school year,* based on the subsequent school year results, the commissioner shall designate public schools requiring a local assistance plan.

(1) . . .
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(6) . . .
(7) . . .
(8) . . .
(9) [Identification of local assistance plan schools as focus schools.

(i) Commencing with 2015-2016 school year results, a school that has been identified as a local assistance plan school based on 2013-2014, 2014-2015 and 2015-2016 school year results and based on each three consecutive school years of results thereafter will be preliminary identified as a focus school.

(ii) School districts and charter schools will be informed of the preliminary status of the school district and schools, and will be provided the opportunity to appeal such preliminarily identification, in a format and according to such timeline as prescribed by the commissioner. If the commissioner identifies a local assistance plan school as a focus school in a district in which in the prior school year there were no schools identified as focus or priority, the district shall also be identified as a focus district.

(iii) If a school district or charter school appeals the designation of a transfer high school as a focus school, the commissioner shall give careful consideration to the mission of the school, student performance, and the school's ability to effectively serve its students in a turnaround environment. The commissioner will take into account student performance factors including the age and number of credits that members of the cohort have upon admission to the school and the success of the school in graduating students up to the age of 21.

(10)] School requiring a local assistance plan.

(i) [Beginning with] *For* the *2015-2016 and 2016-2017 school years, using the* 2013-2014 *and 2014-2015* school year results *respectively* [and annually thereafter], a school that has not been designated as a priority or focus school shall be designated as a local assistance plan school if the school:

(a) failed to make adequate yearly progress (AYP) for an accountability group for three consecutive years on the same performance criterion in subdivision (j) of this section; provided that such school shall not be designated as a local assistance plan school if the school has met other measures of progress as determined by the commissioner pursuant to subparagraph (ii) of this paragraph; or

(b) has gaps in achievement on a performance criterion in subdivision (j) of this section and the school has not shown sufficient progress toward reducing or closing those gaps, or meeting other measures of

progress as determined by the commissioner pursuant to subparagraph (ii) of this paragraph, between students who are members and students who are not members of that accountability group; or

(c) for determinations based on 2013-2014 school year results, the school is located in a district that is not designated as Focus and the school meets the criteria for identification as a focus school pursuant to subparagraph (7)(ii) of this subdivision, and such other measures of progress as determined by the commissioner pursuant to subparagraph (ii) of this paragraph and for determinations based on 2014-2015 school year results and each school year's results thereafter the school meets the criteria for identification pursuant to paragraph (8) of this subdivision.

(ii) Notwithstanding the provisions of clauses (i)(a) through (c) of this paragraph, the commissioner may consider other measures of progress in determining whether to identify a school as a local assistance plan school *using the 2013-2014 school year results and/or the 2014-2015 school year results*, including but not limited to:

(a) whether a subgroup has made two consecutive years of AYP;

(b) the subgroup's Student Growth Percentile (SGP) is above State average;

(c) the percentile rank of the Performance Index (PI)/graduation rate of a subgroup on an accountability measure as compared to the percentile rank of the PI/graduation rate of the subgroup in other schools in the State;

(d) whether the graduation rate of the subgroup is above State average; and/or

(e) if the subgroup's performance on an accountability measure has changed from year to year.

(iii) For transfer high schools for which a district has submitted alternative high school cohort data, the commissioner shall review such data to determine whether the school shall be designated as requiring a local assistance plan.

(iv) Notwithstanding subparagraphs (i), (ii) and (iii) of this paragraph, commencing with the 2014-2015 school year results a school shall not be identified as a Local Assistance Plan School until the school meets any of the criteria specified in clauses (i)(b) and (c) of this paragraph for two consecutive years.

(v) Districts will be informed of the preliminary status of its schools and will be provided the opportunity to appeal the identification of any preliminarily identified school.

(vi) The commissioner shall remove from Local Assistance Plan status a school that for two consecutive school years does not meet the criteria for identification in clauses (i)(a), (b) and (c) of this paragraph.

(vii) The commissioner shall consider the 2015-2016 school year results in determining whether a school designated as a local assistance plan school pursuant to this paragraph shall retain such designation in the 2017-2018 school year.

[(11)] *(10)* Public notification of identification as a priority or focus school.

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-27-17-00011-EP, Issue of July 5, 2017. The emergency rule will expire November 10, 2017.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the State Education Department, with Board of Regents as its head, and authorizes the Regents to appoint the Commissioner of Education as Department's Chief Administrative Officer, who is charged with general management and supervision of all public schools and educational work of State.

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

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 210 authorizes the Regents to register domestic and foreign institutions in terms of State standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and professions in the State.

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents. Section 305(20) provides the Commissioner shall have such further powers and duties as charged 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 general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3713(1) and (2) authorize State and school districts to accept federal law making appropriations for educational purposes and authorize Commissioner to cooperate with federal agencies to implement such law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy relating to public school and district accountability and federal requirements relating to the provisions of the Every Student Succeeds Act of 2015 (ESSA).

3. NEEDS AND BENEFITS:

Prior to the passage of ESSA, the State's accountability system was aligned with the requirements of the federal Elementary and Secondary Education Act (ESEA) Flexibility Waiver. Under the ESEA Flexibility Waiver, the Department committed to annually identifying LAP and Focus Schools.

On December 10, 2015, ESSA was signed into law by President Obama. ESSA, a bipartisan measure, reauthorized the 50-year-old ESEA and provides federal funds to improve elementary and secondary education in the nation's public schools and requires states and school districts, as a condition of funding, to take a variety of actions to ensure that all children, regardless of race, income, background, or where they live, receive the education they need to prepare them for success in postsecondary education, careers, and citizenship.

ESSA requires states to identify Comprehensive Support and Intervention and Targeted Support and Intervention Schools, beginning with 2017-2018 school year results. The law does not require the State to identify any additional category of schools for support and intervention. Furthermore, the USDE has issued guidance that clarifies that states are not required to identify new schools pursuant to a state's approved ESEA flexibility waiver for intervention while transitioning to the new accountability system required by ESSA.

Accordingly, the proposed regulatory amendment would remove the requirement that LAP and Focus Schools be identified using assessment results from the 2015-16 and subsequent school years.

4. COSTS:

Cost to the State: none.

Costs to local government: none.

Cost to private regulated parties: none.

Cost to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment does not impose any direct costs on the State, local governments, private regulated parties or the State Education Department beyond those imposed by federal law.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to State and Federal standards for public school and school district accountability and will not impose any additional program, service, duty or responsibility upon local governments.

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed amendment relates to public school and school district accountability and is necessary to implement Regents policy relating to public school and district accountability and federal requirements relating to the provisions of the Every Student Succeeds Act of 2015 (ESSA).

9. FEDERAL STANDARDS:

The proposed amendment is necessary to conform the Commissioner's Regulations to ESSA which requires states to identify Comprehensive Support and Intervention and Targeted Support and Intervention Schools, beginning with 2017-2018 school year results.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed amendment will not impose any additional compliance

requirements but instead removes the requirement that LAP and Focus Schools be identified using assessment results from the 2015-16 and subsequent school years.

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

(b) Local government:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments but instead removes the requirement that LAP and Focus Schools be identified using assessment results from the 2015-16 and subsequent school years.

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to conform the Commissioner's regulations to ESSA which requires states to identify Comprehensive Support and Intervention and Targeted Support and Intervention Schools, beginning with 2017-2018 school year results.

3. NEEDS AND BENEFITS:

Prior to the passage of ESSA, the State's accountability system was aligned with the requirements of the federal Elementary and Secondary Education Act (ESEA) Flexibility Waiver. Under the ESEA Flexibility Waiver, the Department committed to annually identifying LAP and Focus Schools.

On December 10, 2015, ESSA was signed into law by President Obama. ESSA, a bipartisan measure, reauthorized the 50-year-old ESEA and provides federal funds to improve elementary and secondary education in the nation's public schools and requires states and school districts, as a condition of funding, to take a variety of actions to ensure that all children, regardless of race, income, background, or where they live, receive the education they need to prepare them for success in postsecondary education, careers, and citizenship.

ESSA requires states to identify Comprehensive Support and Intervention and Targeted Support and Intervention Schools, beginning with 2017-2018 school year results. The law does not require the State to identify any additional category of schools for support and intervention. Furthermore, the USDE has issued guidance that clarifies that states are not required to identify new schools pursuant to a state's approved ESEA flexibility waiver for intervention while transitioning to the new accountability system required by ESSA.

Accordingly, the proposed regulatory amendment would remove the requirement that LAP and Focus Schools be identified using assessment results from the 2015-16 and subsequent school years.

4. PROFESSIONAL SERVICES:

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

5. COMPLIANCE COSTS:

The proposed amendment does not impose any additional compliance requirements or costs beyond those required by federal law and is necessary to implement Regents policy relating to public school and district accountability and federal requirements relating to the provisions of the Every Student Succeeds Act of 2015 (ESSA).

6. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

7. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's regulations to ESSA which requires states to identify Comprehensive Support and Intervention and Targeted Support and Intervention Schools, beginning with 2017-2018 school year results.

8. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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:

Prior to the passage of the Every Student Succeeds Act of 2015 (ESSA), the State's accountability system was aligned with the requirements of the federal Elementary and Secondary Education Act (ESEA) Flexibility Waiver. Under the ESEA Flexibility Waiver, the Department committed to annually identifying LAP and Focus Schools.

On December 10, 2015, ESSA was signed into law by President Obama. ESSA, a bipartisan measure, reauthorized the 50-year-old ESEA and provides federal funds to improve elementary and secondary education in the nation's public schools and requires states and school districts, as a condition of funding, to take a variety of actions to ensure that all children, regardless of race, income, background, or where they live, receive the education they need to prepare them for success in postsecondary education, careers, and citizenship.

ESSA requires states to identify Comprehensive Support and Intervention and Targeted Support and Intervention Schools, beginning with 2017-2018 school year results. The law does not require the State to identify any additional category of schools for support and intervention. Furthermore, the USDE has issued guidance that clarifies that states are not required to identify new schools pursuant to a state's approved ESEA flexibility waiver for intervention while transitioning to the new accountability system required by ESSA.

Accordingly, the proposed regulatory amendment would remove the requirement that LAP and Focus Schools be identified using assessment results from the 2015-16 and subsequent school years.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs on the State, local governments, private regulated parties or the State Education Department beyond those required by federal law. It is necessary to conform the Commissioner's regulations to ESSA which requires states to identify Comprehensive Support and Intervention and Targeted Support and Intervention Schools, beginning with 2017-2018 school year results.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs and is necessary to implement Regents policy relating to public school and district accountability and federal requirements relating to the provisions of the Every Student Succeeds Act of 2015 (ESSA).

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.

Job Impact Statement

The proposed amendment relates to public school and school district accountability and is necessary to implement Regents policy relating to public school and district accountability and federal requirements relating to the provisions of the Every Student Succeeds Act of 2015 (ESSA).

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.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Conditional Initial Certificates for Classroom Teachers

I.D. No. EDU-39-17-00006-EP

Filing No. 771

Filing Date: 2017-09-12

Effective Date: 2017-09-12

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

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

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

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

Specific reasons underlying the finding of necessity: As a result of recommendations from the edTPA Task Force, the Department is currently in the process of implementing a new edTPA passing score, an edTPA handbook

review process, and a Multiple Measures Review Process for candidates who do not pass the edTPA. The existing Safety Net for the edTPA (take and pass the Assessment of Teaching Skills—Written (ATS-W) after receiving a failing edTPA score) is set to expire on June 30, 2018, or when the Commissioner approves a new passing score as recommended by a new standard setting panel, whichever is earlier. This new passing score will be implemented in Fall of 2017, at which time the ATS-W Safety Net for the edTPA would expire under current regulations. The Department has presented emergency regulations to extend the existing safety net until June 30, 2018 even though the new passing score will be in effect, so that candidates will still be able to take advantage of this before the Department has fully implemented the Multiple Measures Review Process.

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 December 2017 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the December Regents meeting, is December 27, 2017 the date a Notice of Adoption would be published in the State Register. However, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to ensure that teacher candidates who will be taking the edTPA from the time the new passing score is implemented until the implementation of the Multiple Measures Review Process are able to take advantage of the Safety Net and are not at a disadvantage.

Subject: Conditional initial certificates for classroom teachers.

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

Text of emergency/proposed rule: 1. Subdivision (c) of section 80-1.5 of the Regulations of the Commissioner of Education shall be amended, effective September 12, 2017, to be 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 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 [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 [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. Subdivision (d) of section 80-1.5 of the Regulations of the Commissioner of Education shall be amended, effective September 12, 2017, to be 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] *two points* below the new passing score set by the standard setting panel, as determined by the Commissioner;

(ii) . . .

(iii) . . .

(iv) . . .

(3) . . .

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 December 10, 2017.

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

Education Law 3006 authorizes the Commissioner to issue teaching certificates and to promulgate regulations relating to the requirements for such certificates.

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

2. LEGISLATIVE OBJECTIVES:

The purpose of the proposed amendment is to extend the existing edTPA Safety Net until June 30, 2018. This extension will help candidates transition to the Multiple Measures Review Process, which is anticipated to begin in early 2018. The amendment also revises the eligibility criteria for the Multiple Measures Review Process from "one standard deviation below the passing score" to "two points below the passing score" to be aligned with the recommendations of the edTPA standard setting panel. This means that candidates falling two points below the new edTPA passing score will be eligible to use the Multiple Measures Review Process.

3. NEEDS AND BENEFITS:

Based on recommendations from the edTPA Task Force presented in January 2017, the Department convened a 31-member edTPA standard setting panel in June 2017 to review the edTPA passing score. This panel included higher education faculty with experience in teacher preparation as well as P-12 educators. The panel was demographically and geographically diverse. The panel recommended a passing score of 40 to be implemented after a four-year phase-in period.

Under the recommended phase-in period beginning January 1, 2018, the new passing score for the edTPA will be 38. When the Multiple Measures Review Process in Section 80-1.5 of the Regulations is implemented, candidates who fail the edTPA with a score of 36 or 37 will be eligible for this review of their edTPA score to determine if they have demonstrated to their faculty and their teacher/mentor that they have the knowledge, skills, and abilities to become a teacher of record despite failing the edTPA.

Proposed Amendment

Currently, the Regulations authorize candidates to take advantage of the edTPA Safety Net until 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 until June 30, 2018, whichever is earlier. In order to help candidates transition to the Multiple Measures Review Process, the proposed amendment will extend the existing edTPA Safety Net until June 30, 2018. This extension of the Safety Net will help candidates transition to the Multiple Measures Review Process, which is anticipated to begin in early 2018. The amendment also revises Section 80-1.5(d) to change the eligibility criteria for the Multiple Measures Review Process from "one standard deviation below the passing score" to "two points below the passing score" to be aligned with the recommendation of the edTPA standard setting panel. This means that candidates falling two points below the new edTPA passing score will be eligible to use the Multiple Measures Review Process.

4. COSTS:

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

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

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

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

5. LOCAL GOVERNMENT MANDATES:
The proposed amendment does not impose any additional program, service, duty or responsibility upon any local government.
6. PAPERWORK:
The proposed amendment does not impose any additional paperwork requirements.
7. DUPLICATION:
The proposed amendment does not duplicate existing State or Federal requirements.
8. ALTERNATIVES:
The proposed amendment is the result of the extensive work of the edTPA Task Force as well as the edTPA standard setting panel. Alternative recommendations were discussed by the Task Force and standard setting panel, and the resulting recommendations represent consensus of the groups.
9. FEDERAL STANDARDS:
There are no applicable Federal standards.
10. COMPLIANCE SCHEDULE:
If adopted by the Board of Regents at its September meeting, the proposed amendment will become effective as an emergency measure on September 12, 2017. Following the 45-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be presented to the Board of Regents for adoption at its December 2017 meeting and would become effective as a permanent rule on December 27, 2017.

Regulatory Flexibility Analysis

The purpose of the proposed emergency amendment is to amend section 80-1.5 of the Regulations of the Commissioner of Education to extend the existing edTPA Safety Net until June 30, 2018. This extension of the Safety Net will help candidates transition to the Multiple Measures Review Process, which is anticipated to begin in early 2018. The amendment also revises Section 80-1.5(d) to change the eligibility criteria for the Multiple Measures Review Process from "one standard deviation below the passing score" to "two points below the passing score" to be aligned with the recommendation of the edTPA standard setting panel. This means that candidates falling two points below the new edTPA passing score will be eligible to use the Multiple Measures Review Process.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:
This proposed amendment applies to all teacher certification candidates where the edTPA is a certification requirement, 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:
Based on recommendations from the edTPA Task Force presented in January 2017, the Department convened a 31-member edTPA standard setting panel in June 2017 to review the edTPA passing score. This panel included higher education faculty with experience in teacher preparation as well as P-12 educators. The panel was demographically and geographically diverse. The panel recommended a passing score of 40 to be implemented after a four-year phase-in period.
Under the recommended phase-in period beginning January 1, 2018, the new passing score for the edTPA will be 38. When the Multiple Measures Review Process in Section 80-1.5 of the Regulations is implemented, candidates who fail the edTPA with a score of 36 or 37 will be eligible for this review of their edTPA score to determine if they have demonstrated to their faculty and their teacher/mentor that they have the knowledge, skills, and abilities to become a teacher of record despite failing the edTPA.
Proposed Amendment
Currently, the Regulations authorize candidates to take advantage of the edTPA Safety Net until 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 until June 30, 2018, whichever is earlier. In order to help candidates transition to the Multiple Measures Review Process, the proposed amendment will extend the existing edTPA Safety Net until June 30, 2018. This extension of the Safety Net will help candidates transition to the Multiple Measures Review Process, which is anticipated to begin in early 2018. The amendment also revises Section 80-1.5(d) to change the eligibility criteria for the Multiple Measures Review Process from "one standard deviation below the passing score" to "two points below the passing score" to be aligned with the recommendation of the edTPA standard setting panel. This means that candidates falling two points below the new edTPA passing score will be eligible to use the Multiple Measures Review Process.
3. COSTS:
The proposed amendment does not impose any costs on teacher certification candidates.
4. MINIMIZING ADVERSE IMPACT:
The proposed amendment seeks to extend the safety net for candidates taking the edTPA, and to conform the eligibility criteria for the Multiple Measures Review Process to the recommendations from the edTPA standard setting panel. The amendment creates no adverse impact on teacher certification candidates.
5. RURAL AREA PARTICIPATION:
Copies of the proposed amendments have been provided to Rural Advisory Committee for review and comment.

Job Impact Statement

The purpose of the proposed emergency amendment to section 80-1.5 of the Regulations of the Commissioner of Education is to extend the existing edTPA Safety Net until June 30, 2018. This extension of the Safety Net will help candidates transition to the Multiple Measures Review Process, which is anticipated to begin in early 2018. The amendment also revises Section 80-1.5(d) to change the eligibility criteria for the Multiple Measures Review Process from "one standard deviation below the passing score" to "two points below the passing score" to be aligned with the recommendation of the edTPA standard setting panel. This means that candidates falling two points below the new edTPA passing score will be eligible to use the Multiple Measures Review Process.

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

NOTICE OF ADOPTION

Continuing Education Requirements for Veterinarians and Veterinary Technicians

I.D. No. EDU-04-17-00005-A
Filing No. 769
Filing Date: 2017-09-12
Effective Date: 2017-09-27

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

Action taken: Amendment of section 62.8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6704-a; L. 2016, ch. 398

Subject: Continuing education requirements for veterinarians and veterinary technicians.

Purpose: Provides that veterinarians may provide free spaying and neutering services as part of their continuing education requirements.

Text or summary was published in the January 25, 2017 issue of the Register, I.D. No. EDU-04-17-00005-ERP.

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

Revised rule making(s) were previously published in the State Register on June 28, 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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

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

Assessment of Public Comment

Since the publication of a Notice of Emergency Adoption and Revised Rule Making was published in the State Register on June 28, 2017, the State Education Department received the following comment:

1. COMMENT:
An association of veterinarians stated that, although paragraph (4) of subdivision (a) of the revised proposed regulations does provide some guidance regarding the "other veterinary services" mentioned in paragraph (3), in comments previously submitted by the association, there was concern expressed regarding the ambiguity of that phrase despite the definition provided in the proposed regulation. The association of veterinarians further states that the Department's response to its previous comment indicates a willingness to provide further guidance should clarification become necessary, which the association of veterinarians welcomes, but it would like to offer additional comments on that point. The association of veterinarians feels that "other veterinary services" should be defined not just as follow-up services for post-operative complications, but as any services rendered in relation to the procedure within the 24-hour period surrounding the spaying or neutering. The association of veterinarians maintains that this would include treatment and services provided such as a pre-operative physical examination, peri- and post-operative examinations, and any assessment attendant to the procedure. The association of veterinarians states that services provided for any post-operative complications should certainly be part of the definition, but it feels that some of the aforementioned services should be captured in the definition as well, to ensure that licensed veterinarians are providing a full and appropriate range of care to the animals being spayed or neutered.

The association of veterinarians feels that, in addition to guaranteeing the appropriate scope of care, further articulating the services to be included in "other veterinary services" will provide licensed veterinarians clearer guidance on calculating the time allowed for providing these services. In addition, the association of veterinarians maintains that veterinarians performing a free spay or neuter and logging it as continuing education should include not just the time for the surgery, but all of the time they devote to a surgical case. It also states that, in the past, failure to provide adequate services to a patient has resulted in disciplinary action against licensed veterinarians in New York State; additional expression of the services to be provided would be a step toward avoiding that type of oversight.

DEPARTMENT RESPONSE:
As the Department stated, in its response to the association of veterinarians' previous comments on this issue, the Department will take its suggestion, regarding possibly enumerating which "types of services" would constitute "other veterinary services" for continuing education purposes, under consideration and it may issue guidance regarding these types of services if the Department determines that such clarification is necessary in the future. Thus, no changes to the revised proposed rule are necessary at this time.

Additionally, it should be noted that some of the association of veterinarians' suggestions as to what types of services should be included in the "other veterinary services" appear to be beyond the scope of the statutory authority. Pursuant to Education Law § 6704-a(2)(a)(ii), veterinarians, if they want to offset a portion of their required triennial continuing education requirements by providing free spaying and/or neutering services, are "required to provide follow-up service for any post-operative complications related to the surgery that arise within twenty-four hours of performing the surgery. . . ." These follow up services constitute "other veterinary services" for purposes of the revised proposed rule and the association of veterinarians' suggestion that the "other veterinary services" definition include pre-, peri, and post-operative examinations and any assessments, appears to be beyond the scope of the aforementioned statutory authority.

NOTICE OF ADOPTION

Education Requirements for Certification as a Certified Athletic Trainer

I.D. No. EDU-21-17-00006-A
Filing No. 768
Filing Date: 2017-09-12
Effective Date: 2017-09-27

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

Action taken: Amendment of section 79-7.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a) and 8355(2)

Subject: Education requirements for certification as a certified athletic trainer.

Purpose: To conform to current national education standards for certification by eliminating 79-7.2(b) education pathway by July 1, 2022.

Text or summary was published in the May 24, 2017 issue of the Register, I.D. No. EDU-21-17-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: 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 does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Unit of Study Requirements for Career and Technical Education in Grades 7 and 8

I.D. No. EDU-21-17-00007-A
Filing No. 775
Filing Date: 2017-09-12
Effective Date: 2017-09-27

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

Action taken: Amendment of section 100.4 of Title 8 NYCRR.

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

Subject: Unit of Study Requirements for Career and Technical Education in Grades 7 and 8.

Purpose: To implement Regents policy relating to career and technical education units of study.

Text or summary was published in the May 24, 2017 issue of the Register, I.D. No. EDU-21-17-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, New York State Education Department, 89 Washington Avenue, Room 148, Albany, NY 12047, (518) 474-6400, email: legal@nysed.gov

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

Assessment of Public Comment
Since publication of a Notice of Proposed Rule Making in the State Register on May 24, 2017, the State Education Department received the following comments:

1. COMMENT:
Several commenters expressed support for the amendment which will allow the 1.75 unit of Career and Technical Education (CTE) to include all six areas of CTE and thereby make CTE opportunities more available to all students. Commenters highlighted the literacy skills, critical thinking skills, science, math, and other subject areas which are incorporated into existing family and consumer sciences (FACS) curriculum. CTE courses are the vehicle that will drive our students into those industries that most need skilled workers. Middle school students need access to our coursework as a stepping stone into high school and post-secondary programs.

DEPARTMENT RESPONSE:
No response necessary as the comment is supportive.

2. COMMENT:
Commenters support the amendments and believe that "Introduction to CTE" will provide all middle-level students with a high-quality Introduction to CTE experience that will springboard them into the CTE, CDOS, and STEM pathways in the high school. Specifically, middle level "Introduction to CTE" will: bridge middle level CTE to high school CTE; expose all students to all CTE content areas, and highlight the sixteen career clusters through the Common Career Technical Core standards; foster acceleration into graduation pathways in CTE, CDOS, and STEM; be a model for high quality middle level CTE. The majority of classroom strategies are hands-on, problem/project-based learning in these areas. The learning experiences expose students to the 16 career cluster and the 6 CTE content areas to prepare students for their futures, regardless of the pathway they choose.

DEPARTMENT RESPONSE:
No response necessary as the comment is supportive.
3. COMMENT:
Commenter, New York Association of Agricultural Educators is the professional organization representing more than 100 agricultural educators in New York State. Our members teach students in grades 7-12 about agriculture, food, and natural resources equipping them with a wide variety of skills including science, mathematics, communications, leadership, management, and technology. In our integrated programs, students explore the food, agricultural, natural resource, technical and science-based work environments. Of the outcomes in our programs the most important is that students explore careers and develop pathways in these areas.

Middle school CTE is an important starting point for the development of pathways for secondary education. CTE is more suited to empower students with the skills necessary to make appropriate choices regarding high school programs and coursework within career pathways.

The agricultural education program incorporates work experience, leadership development, and rigorous classroom instruction. Our teachers work closely with business and industry, thus this three-component model gives students the skills and experience to explore career paths and gain the skills necessary to become college and career ready.

NYAAE fully supports the Regents decision to amend the regulation by opening it up to the six career and technical content areas (Agricultural; Business & Marketing; Family & Consumer Sciences; Health Occupations; Technology; and Trade, Technical & Industrial education). This flexibility will empower school districts to determine the best combination of CTE disciplines that meets their needs based on the availability of resources and priorities. In addition we join NYSACTE in recommending that an additional 1/4 unit be added to the existing 1 3/4 Career and Technical Education mandate. These additional contact hours will ensure that our middle school students will enter high school with a broader and deeper understand of the career and technical education.
DEPARTMENT RESPONSE:
No response necessary as the comment is supportive.
4. COMMENT:
Commenter, a recent graduate and new CTE teacher, supports the amendments which will allow the 1 3/4 credit of CTE to be expanded to include all 6 branches of CTE. I plan to teach my future middle school students many topics that include: Nutrition & Wellness, Culinary, Sustainability, Career Development, Personal Environment Management and Community Connections. Along with focusing on 21st Century Process skills, I plan to incorporate service learning projects as well. As an educator, I want my students to be able to receive a quality education that will lead to career readiness. I believe this initiative will support not only teachers, but the many students who deserve CTE curriculum to be a part of their school experience.
DEPARTMENT RESPONSE:
No response necessary as the comment is supportive.
5. COMMENT:
Commenters expressed concern about the amendments. Specifically that the combined 1 3/4 credit of CTE would eliminate technology education. Commenters expressed that existing technology education and engineering classes empower students to problem solve world issues, and allow them to experience the roles of engineers and innovators. Technology education and engineering classes offer students to become collaborators and thinkers in real world applications. Our students are leaving our classes with knowledge of materials processing by being exposed to machines such as scroll saws, wood lathes, band saws, hand drills. They're learning about robotics and computer programming, and alternative sources of energy. Our students are learning engineering and design and creating structures that can withstand the forces of an earthquake. In science they are learning about Newton's laws of motion and in technology they can see it happen when they launch rockets. If ever there were a course to complement all other courses it is technology education and engineering.
DEPARTMENT RESPONSE:
The scope of the revised regulation does not prohibit districts from meeting the 1.75 units of CTE required instruction with instruction in Technology Education and does not eliminate Technology Education from the middle level program. Rather, schools with existing high quality Technology Education programs are now able to grow and enhance those programs under the revised regulation and could in fact offer more instruction in this area if desired. Therefore, no revisions are necessary.
6. COMMENT:
Commenter, New York State Association for Career and Technical Education (NYSACTE) supports this change to be inclusive of all CTE areas but has a few concerns. Commenter expressed concern that districts may choose to offer just one of the CTE content areas. While we believe this is not the intent of the change; is there a mechanism to assure that districts, and middle school administrators, understand this change is an effort to allow middle school students a broader exposure to skills and careers? How do we insure that with this new regulation that districts are in compliance?

We believe middle school CTE is an important starting point for pathways education and enables students to make appropriate choices regarding future coursework. However, we believe that in order to accomplish the goal of exposing students to more CTE options the requirement should be increased another 1/4 unit, for a total of 2 CTE units.
DEPARTMENT RESPONSE:
The scope of the revised regulation does not increase the units of instruction required for Career and Technical Education. Districts that are able to increase this time are able to do so, however, the Department is cognizant that in some districts across the state an increase in the requirement would strain existing schedules and resources. Therefore, no revisions are necessary.
7. COMMENT:
The proposed amendment is ill-conceived. It would substitute a mishmosh of programs with no clear conceptual thread for a program that has evolved over 30 years into a strong research-based discipline with a focus on overarching and transferable ideas: Design, systems thinking, modeling, and human values (in contexts that are authentic to learners and important to economic prosperity). There is an enormous body of research and scholarship in the US and globally in support of consistent academic work to maintain contemporary disciplinary currency. The amendment would do away with 30 years of progress with one swipe of the pen.
DEPARTMENT RESPONSE:
The scope of the regulatory amendment does not require that districts eliminate any existing programs. All existing programs that meet the former regulatory requirements will continue to meet the new revised requirement. Therefore, no revisions are necessary.

NOTICE OF ADOPTION

Teaching Certificates in Career and Technical Education

I.D. No. EDU-21-17-00010-A
Filing No. 778
Filing Date: 2017-09-12
Effective Date: 2017-09-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of sections 80-3.3, 80-3.4, 80-3.5 and 80-3.7 of Title 8 NYCRR.
Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), 3004(1) and 3009(1)
Subject: Teaching Certificates in Career and Technical Education.
Purpose: Establish flexibility in the requirements for teaching certifications in CTE to address teacher shortages.
Text or summary was published in the May 24, 2017 issue of the Register, I.D. No. EDU-21-17-00010-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, 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

Academic Intervention Services

I.D. No. EDU-27-17-00010-A
Filing No. 774
Filing Date: 2017-09-12
Effective Date: 2017-09-27

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of section 100.2(ee) of Title 8 NYCRR.

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

Subject: Academic Intervention Services.

Purpose: To revise the methodology by which school districts shall identify students in grades 3-8 who receive AIS.

Text or summary was published in the July 5, 2017 issue of the Register, I.D. No. EDU-27-17-00010-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, New York State Education Department, Room 148, 89 Washington Avenue, Albany, NY 12047, (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

Local Assistance Plan and Focus Schools

I.D. No. EDU-27-17-00011-A

Filing No. 780

Filing Date: 2017-09-12

Effective Date: 2017-09-27

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

Action taken: Amendment of section 100.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), (20), 308(not subdivided), 309(not subdivided), 3713(1) and (2)

Subject: Local Assistance Plan and Focus Schools.

Purpose: To remove the requirement that LAP and focus schools be identified using assessment results from 2015-2016 and thereafter.

Text or summary was published in the July 5, 2017 issue of the Register, I.D. No. EDU-27-17-00011-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, Office of Counsel, NYS Education Department, 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

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

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

Filing No. 782

Filing Date: 2017-09-12

Effective Date: 2017-09-27

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

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

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

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

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

Text or summary was published in the July 12, 2017 issue of the Register, I.D. No. EDU-28-17-00011-P.

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

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

Conditional Initial Certificates for Classroom Teachers

I.D. No. EDU-28-17-00012-A

Filing No. 776

Filing Date: 2017-09-12

Effective Date: 2017-09-27

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

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

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

Subject: Conditional initial certificates for classroom teachers.

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

Text or summary was published in the July 12, 2017 issue of the Register, I.D. No. EDU-28-17-00012-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, Office of Counsel, NYS Education Department, 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

Higher Education Opportunity Programs

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

Filing No. 777

Filing Date: 2017-09-12

Effective Date: 2017-09-27

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

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

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

Subject: Higher Education Opportunity Programs.

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

Text or summary was published in the July 12, 2017 issue of the Register, I.D. No. EDU-28-17-00013-EP.

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

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

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

Assessment of Public Comment
The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Eligibility for Tuition Assistance Program

I.D. No. EDU-39-17-00012-P

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

Proposed Action: Amendment of section 145-2.1 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207(not subdivided), 305, 602 and 661

Subject: Eligibility for Tuition Assistance Program.

Purpose: Amend definition of full-time study for students in their last year of high school.

Text of proposed rule: 1. Paragraph (4) of subdivision (a) of section 145-2.1 of the Regulations of the Commissioner of Education is amended to read as follows:

§ 145-2.1 Full-time and part-time study and remedial workload.

(4) For purposes of section 661(d)(4) of the Education Law, for a student with a disability, as defined in 42 USC 12102(2) (United States Code, 1994 edition, volume 23; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; 1995-available at the [office] *Office* of Higher [and Professional] Education, Education Building Annex, Room 979, Albany, NY 12234), part-time study or attendance shall mean enrollment in credit-bearing courses applicable to the students' program, for at least three but less than 12 semester hours per semester or the equivalent, or at least two but less than eight semester hours per quarter.

2. Subdivision (e) of section 145-2.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(e) A student will be deemed to meet the full-time [or part-time study] requirement in their last semester of eligibility in their program of study if the student takes at least one course needed to meet their graduation requirements and the student enrolls in [and completes] at least 12 semester hours or its equivalent. *A student shall be deemed to meet the full-time study requirement in the semester prior to their last semester of eligibility in their program of study if the student takes at least six semester hours needed to meet their graduation requirements and the student enrolls in at least 12 semester hours or its equivalent.*

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Education Law 305 (1) and (2) grants the commissioner with enforcement of all general and special laws relating to the education system of the state and with executing all educational policies determined by the board of regents and provides the Commissioner with the authority to promulgate regulations in certain areas.

Education Law 602 grants the commissioner the authority to define the terms determining a student's eligibility for student aid and loan programs.

Education Law 661 establishes the eligibility requirements and conditions governing awards and loans.

2. LEGISLATIVE OBJECTIVES:

The purpose of the proposed amendment to section 145-2.1 of the Regulations of the Commissioner of Education is to provide additional flexibility to students who have difficulty meeting the "full-time" status for purposes of Tuition Assistance Program (TAP) in their program of study during their final year of college. The proposed amendment allows a student to meet the full-time study requirement in their second to last semester of eligibility if the student takes at least 6 semester hours needed to meet their graduation requirements (formerly 12) and the student enrolls in at least 12 semester hours or its equivalent. The proposed amendment also makes a technical amendment to section 145-2.1 of the Commissioner's Regulations to change an outdated reference to the Officer of Higher and Professional Education to the current name of the Office of Higher Education.

3. NEEDS AND BENEFITS:

Section 661 of the Education Law establishes TAP and charges the Commissioner with the authority to "promulgate regulations to define the following terms by which the president can determine a student's eligibility for student aid and loan programs: (a) full-time study or attendance; (b) part-time study or attendance; (c) full-time and part-time accelerated study beyond the regular program of study for the academic year; (d) permissible use of general and academic performance awards; (e) matriculation; and (f) loss of good academic standing." Section 602 of the Education Law requires the Commissioner to "promulgate regulations by which the president shall determine whether a student has entered an approved program during the academic year prior to the normal effective date of the student's award."

Proposed Amendment:

In March 2017, the Inter-Agency Task Force reviewed the current TAP regulations and recommended an amendment to the term full-time study. The proposed amendment provides additional flexibility to students who have difficulty meeting full-time status in their program of study during their final year, most typically due to some quantity of extraneous credits earned for college during high school, or due to transfer credits, or extra credits received while the student was pursuing additional majors. The proposed amendment allows a student to meet the full-time study requirement in their second to last semester of eligibility if the student takes at least 6 semester hours needed to meet their graduation requirements and the student enrolls in at least 12 semester hours or its equivalent. The proposed amendment also makes a technical amendment to section 145-2.1 of the Commissioner's Regulations to change an outdated reference to the Officer of Higher and Professional Education to the current name of the Office of Higher Education.

4. COSTS:

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

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

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment does not impose any additional paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment is based on the recommendations from the Inter-Agency Task Force which was asked to review the TAP regulations, and directly addresses a barrier that students enrolled in TAP encounter. No other alternatives were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will come before the Board of Regents for permanent adoption at its December 2017 meeting and will become effective as a permanent rule on December 27, 2017.

Regulatory Flexibility Analysis

The purpose of the proposed amendment to section 145-2.1 of the Regulations of the Commissioner of Education is to provide additional flexibility to students who have difficulty meeting "full-time" status for purposes of Tuition Assistance Program (TAP) in their program of study during their final year of college. The proposed amendment allows a student to meet the full-time study requirement in their second to last semester of eligibility if the student takes at least 6 semester hours needed to meet their gradu-

ation requirements (formerly 12) and the student enrolls in at least 12 semester hours or its equivalent. The proposed amendment also makes a technical amendment to section 145-2.1 of the Commissioner's Regulations to change an outdated reference to the Officer of Higher and Professional Education to the current name of the Office of Higher Education. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment to section 145-2.1 of the Regulations of the Commissioner of Education will provide additional flexibility to students who have difficulty meeting "full-time" status for purposes of Tuition Assistance Program (TAP) in their program of study during their final year of college, including those in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The purpose of the proposed amendment to section 145-2.1 of the Regulations of the Commissioner of Education is to provide additional flexibility to students who have difficulty meeting "full-time" status for purposes of Tuition Assistance Program (TAP) in their program of study during their final year of college. The proposed amendment allows a student to meet the full-time study requirement in their second to last semester of eligibility if the student takes at least 6 semester hours needed to meet their graduation requirements (formerly 12) and the student enrolls in at least 12 semester hours or its equivalent. The proposed amendment also makes a technical amendment to section 145-2.1 of the Commissioner's Regulations to change an outdated reference to the Officer of Higher and Professional Education to the current name of the Office of Higher Education.

3. COSTS:

The proposed amendment does not impose any costs.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is based on the recommendations from the Inter-Agency Task Force which was asked to review the TAP regulations, and directly addresses a barrier that students enrolled in TAP encounter. The amendment creates no adverse impact; it aids students who are eligible for TAP but who have difficulty meeting full-time status.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed amendment to section 145-2.1 of the Regulations of the Commissioner of Education is to provide additional flexibility to students who have difficulty meeting "full-time" status for purposes of Tuition Assistance Program (TAP) in their program of study during their final year of college. The proposed amendment allows a student to meet the full-time study requirement in their second to last semester of eligibility if the student takes at least 6 semester hours needed to meet their graduation requirements (formerly 12) and the student enrolls in at least 12 semester hours or its equivalent. The proposed amendment also makes a technical amendment to section 145-2.1 of the Commissioner's Regulations to change an outdated reference to the Officer of Higher and Professional Education to the current name of the Office of Higher Education.

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Principal Preparation Programs and Annual Professional Performance Reviews

I.D. No. EDU-39-17-00013-P

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

Proposed Action: Amendment of sections 30-3.2, 30-3.5, 52.1, 52.21, 80-3.2 and 80-3.10 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2) and 3012-d(4)

Subject: Principal Preparation Programs and Annual Professional Performance Reviews.

Purpose: Establishes new professional practice guidelines and expectations for principals.

Text of proposed rule: 1. Paragraphs (4), (5) and (6) of subdivision (a) of section 52.1 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(4) every curriculum leading to a certificate or diploma offered by a nonchartered proprietary institution authorized by the Regents to grant degrees, except noncredit curricula approved by another State agency for the purpose of licensure by that agency; *and*

(5) every curriculum leading to a master's degree in a clinically rich graduate level teacher preparation pilot program as prescribed under section 52.21(b)(5) of this Part [; and

(6) every curriculum leading to certification as a school building leader in a clinically rich graduate level principal preparation pilot program as prescribed under section 52.21(c)(7) of this Part].

2. Subparagraph (vi) of paragraph (2) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is amended to read as follows:

(iv) Content requirements. *(a)* [Programs] *Prior to December 1, 2020, programs* shall require candidates to complete studies sufficient to demonstrate, upon program completion, the knowledge and skills necessary to perform the following:

[(a)] *(1)* develop and implement an educational vision, or build and sustain an existing one, for assisting all students to meet State learning standards;

[(b)] *(2)* collaboratively identify goals and objectives for achieving the educational vision, seeking and valuing diverse perspectives and alternative points of view, and building understanding through direct and precise questioning;

[(c)] *(3)* communicate and work effectively with parents, staff, students, community leaders, and other community members from diverse backgrounds, providing clear, accurate written and spoken information that publicizes the school's goals, expectations, and performance results, and builds support for improving student achievement;

[(d)] *(4)* lead comprehensive, long-range planning, informed by multiple data sources, to determine the present state of the school, identify root causes of problems, propose solutions, and validate improvements with regard to all aspects of the school, including but not limited to:

[(1)] *(i)* curriculum development;

[(2)] *(ii)* instructional strategies and the integration of technology;

[(3)] *(iii)* classroom organization and practices;

[(4)] *(iv)* assessment;

[(5)] *(v)* student support services, including the provision of services to students with disabilities;

[(6)] *(vi)* professional support and development;

[(7)] *(vii)* succession planning;

[(8)] *(viii)* student, family, and community relations;

[(9)] *(ix)* facilities development; and

[(10)] *(x)* planning with colleges for providing curricula and experiences for college students preparing to become educators that will enhance their learning and the learning of the school's students;

[(e)] *(5)* effect any needed educational change through ethical decision making based upon factual analysis, even in the face of opposition;

[(f)] *(6)* establish accountability systems for achieving educational goals and objectives;

[(g)] *(7)* set a standard for ethical behavior by example, encouraging initiative, innovation, collaboration, mutual respect, and a strong work ethic;

[(h)] *(8)* develop staff capability for addressing student learning needs by effective supervision and evaluation of teachers, by effective staff assignments, support, and mentoring, and by providing staff with opportunities for continuous professional development;

[(i)] *(9)* create the conditions necessary to provide a safe, healthy, and supportive learning environment for all students and staff;

[(j)] *(10)* establish a school budget and manage school finances and facilities to support achievement of educational goals and objectives;

[(k)] *(11)* apply statutes and regulations as required by law, and implement school policies in accordance with law; and

[(l)] *(12)* maintain a personal plan for self-improvement and continuous learning.

(b) On or after December 1, 2020, programs shall require candidates to complete studies sufficient to demonstrate, upon program completion, the knowledge and skills necessary to:

(1) develop, advocate, and enact a shared mission, vision, and core

values of high-quality education and academic success and well-being of each student;

(2) act ethically and professionally and according to professional norms to promote each student's academic success and well-being;

(3) strive for equity of educational opportunity and culturally responsive practices to promote each student's academic success and well-being;

(4) develop and support intellectually rigorous, culturally relevant, and coherent systems of curriculum, instruction, and assessment to promote the academic success and well-being of all students;

(5) cultivate an inclusive, caring, and supportive school community that promotes the academic success and well-being of all students;

(6) develop the professional capacity, cultural competence, and practice of school personnel to promote the love of learning, academic success, and well-being of all students;

(7) foster a professional community of teachers and other professional staff to promote each student's academic success and well-being;

(8) engage families and the community in meaningful, reciprocal, and mutually beneficial ways to promote each student's academic success and well-being;

(9) manage school operations and resources to promote each student's academic success and well-being; and

(10) act as agents of continuous improvement to promote each student's academic success and well-being;

3. Paragraph (7) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of the Education shall be repealed.

4. Section 30-3.2 of the Rules of the Board of Regents is amended, to read as follows:

§ 30-3.2 Definitions. As used in this Subpart:

(m) Leadership standards shall mean:

(1) For annual professional performance reviews conducted prior to the 2022-2023 school year, the Educational Leadership Policy Standards: ISLLC 2008 as adopted by the National Policy Board for Educational Administration (Council of Chief State School Officers, Washington DC, One Massachusetts Avenue, NW, Suite 700, Washington, DC 20001-1431; 2008- available at the Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, NY 12234). The Leadership Standards provide that an education leader promotes the success of every student by:

[(1)] *(i)* facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community;

[(2)] *(ii)* advocating, nurturing and sustaining a school culture and instructional program conducive to student learning and staff professional growth;

[(3)] *(iii)* ensuring management of the organization, operations and resources for a safe, efficient, and effective learning environment;

[(4)] *(iv)* collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

[(5)] *(v)* acting with integrity, fairness, and in an ethical manner; and

[(6)] *(vi)* understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

(2) For annual professional performance reviews conducted commencing in the 2022-2023 school year, the Professional Standards for Educational Leaders: PSEL 2015 as adopted by the National Policy Board for Educational Administration (1904 Association Drive, Reston, VA 20191 -- available at the Office of Counsel, State Education Department, State Education Building, Room 148, 89 Washington Avenue, Albany, NY 12234), as modified by the Board of Regents The New York State Leadership Standards provide that an education leader shall:

(i) develop, advocate, and enact a shared mission, vision, and core values of high-quality education and academic success and well-being of each student;

(ii) act ethically and professionally and according to professional norms to promote each student's academic success and well-being;

(iii) strive for equity of educational opportunity and culturally responsive practices to promote each student's academic success and well-being;

(iv) develop and support intellectually rigorous, culturally relevant, and coherent systems of curriculum, instruction, and assessment to promote the academic success and well-being of all students;

(v) cultivate an inclusive, caring, and supportive school community that promotes the academic success and well-being of all students;

(vi) develop the professional capacity, cultural competence, and practice of school personnel to promote the love of learning, academic success, and well-being of all students;

(vii) foster a professional community of teachers and other professional staff to promote each student's academic success and well-being;

(viii) engage families and the community in meaningful, reciprocal, and mutually beneficial ways to promote each student's academic success and well-being;

(ix) manage school operations and resources to promote each student's academic success and well-being; and

(x) act as agents of continuous improvement to promote each student's academic success and well-being;

Provided, however, that nothing shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on and after December 1, 2022 that requires the use of the ISLLC: 2008 standards until entry into a successor collective bargaining agreement.

3. Section 30-3.5 of the Rules of the Board of Regents is amended to read as follows:

(10) The evaluator may select a limited number of observable rubric subcomponents for focus on within a particular school visit, so long as all observable [ISLLC] *leadership* standards are addressed across the total number of annual school visits.

(11) . . .

(12) . . .

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

5. Clause (a) of subparagraph (ii) of paragraph (1) of subdivision (a) of section 80-3.10 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(a) Education. [The candidate shall meet the education requirement by meeting the requirements in one of the following subclass:

(1)] The candidate shall hold a master's or higher degree from a regionally accredited higher education institution or an equivalently approved higher education institution as determined by the department and have successfully completed a program leading to the initial certificate as a school building leader in the educational leadership service registered pursuant to section 52.21(c)(2) of this Title, or its equivalent as determined by the department, or an educational leadership program leading to a regular certificate in an equivalent title to a school building leader, accredited by an accrediting body recognized by the United States Department of Education at a regionally accredited institution outside of New York State.

[(2) The candidate shall hold a baccalaureate or graduate degree from a regionally accredited higher education institution or an equivalently approved higher education institution as determined by the department and have successfully completed the Clinically Rich Principal Preparation Pilot Program leading to the initial certificate as a school building leader in the educational leadership service registered pursuant to section 52.21(c)(7) of this Title.]

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Education Law 305 (1) and (2) grants the commissioner with enforcement of all general and special laws relating to the education system of the state and with executing all educational policies determined by the board of regents and provides the Commissioner with the authority to promulgate regulations in certain areas.

Education Law 3012-d establishes the requirements for annual professional performance reviews for teachers and principals and requires school

districts and boards of cooperative educational services to use a State approved rubric.

2. LEGISLATIVE OBJECTIVES:

The purpose of the proposed amendment is to establish new professional practice guidelines and expectations for all principals called the Professional Standards for Educational Leaders (PSELs). Evaluations of the school building leaders under the new standards will go into effect after December 1, 2022. In addition, the proposed amendment requires that any evaluation of principals conducted on or after December 1, 2022 shall be aligned to the PSELs, with modifications as determined by the Board of Regents. However, nothing shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on and after December 1, 2022 that requires the use of the 2008 ISLLC Standards. This change will require that all principal practice rubrics be resubmitted to the Department through an updated Request for Proposal, which the Department will release to the field prior to December 1, 2022.

The ISLLC Standards are also contained in the regulations relating to the clinically rich principal preparation program, which expired on June 30, 2016. In an effort to conform the regulations to current practice, the Department also recommends making a technical amendment to repeal references in Sections 52.21 and 80-3.10 to the clinically rich principal preparation program.

3. NEEDS AND BENEFITS:

In 2008, the ISLLC Standards published in 1996 were revised and replaced by educational leadership standards that were again prepared and published by the Interstate School Leaders Licensure Consortium. In 2015, the Professional Standards for Educational Leaders (PSELs) were published after a two-year development process led by the National Policy Board for Educational Administration.

The PSELs are better aligned to the realities of today's workplace because they place greater emphasis on culturally responsive practices, sound instructional practice, ways principals can better support the professional growth of teachers, methods that foster better community engagement, the importance of engaging with a more-diverse community, and the importance of plans and practices that advance equity in every aspect of the educational enterprise.

In 2016, Commissioner Elia assembled a 37-member Principal Project Advisory Team that met seven times between September 21, 2016 and May 31, 2017. Stakeholders included parents, teachers, principals (or those holding the School Building Leader certification), superintendents, district superintendents, local school board members, representatives of civil rights interest groups, and deans of schools of education at institutions of higher education (or their designees). The work of the Advisory Team culminated in a report that was presented to the Board of Regents on July 18, 2017. One resulting recommendation of the Principal Project Advisory is for the Department and the Board of Regents to adopt the 2015 Professional Standards for Educational Leaders with four modifications.

Proposed Amendment:

Currently, the professional practice and evaluation of in-service principals as well as program registration standards for school building leader programs are aligned to the 2008 ISLLC standards. The proposed amendment requires that all school building leader programs that are registered or seek registration under Section 52.21 of the Commissioner's Regulations on or after December 1, 2020 be aligned to the PSELs, with modifications as made by the Principal Project Advisory Team.

The proposed amendment establishes new professional practice guidelines and expectations for all principals. Any evaluations of the school building leaders under the new standards will go into effect after December 1, 2022. In addition, the proposed amendment requires that any evaluation of principals conducted on or after December 1, 2022 shall be aligned to the PSELs, with modifications as determined by the Board of Regents. However, nothing shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on and after December 1, 2022 that requires the use of the 2008 ISLLC Standards. This change will require that all principal practice rubrics be resubmitted to the Department through an updated Request for Proposal, which the Department will release to the field prior to December 1, 2022.

The ISLLC Standards are also contained in the regulations relating to the clinically rich principal preparation program, which expired on June 30, 2016. In an effort to conform the regulations to current practice, the Department also recommends making a technical amendment to repeal references in Sections 52.21 and 80-3.10 to the clinically rich principal preparation program.

4. COSTS:

a. Costs to State government: The amendment does not impose any costs on State government. Costs on the State Education Department are related to staff resources needed for programs that must re-register principal preparation programs consistent with the new standards.

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

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment does not impose any additional paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment is based on the recommendations from the Principal Project Advisory Team and represent a consensus of this team of experts. School districts and BOCES have until December 1, 2022 to prepare for implementation of principal evaluations aligned with the PSELs. This time is designed to minimize any adverse impact on the field resulting from this transition.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will come before the Board of Regents for permanent adoption at its December 2017 meeting and will become effective as a permanent rule on December 27, 2017.

Regulatory Flexibility Analysis

(a) Small businesses:

Currently, the professional practice and evaluation of in-service principals as well as program registration standards for school building leader programs are aligned to the 2008 ISLLC standards. The proposed amendment requires that all school building leader programs that are registered or seek registration under Section 52.21 of the Commissioner's Regulations on or after December 1, 2020 be aligned to the PSELs, with modifications as recommended by the Principal Project Advisory Team.

The proposed amendment establishes new professional practice guidelines and expectations for all principals. Any evaluations of the school building leaders under the new standards will go into effect after December 1, 2022. In addition, the proposed amendment requires that any evaluation of principals conducted on or after December 1, 2022 shall be aligned to the PSELs, with modifications as determined by the Board of Regents. However, nothing shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on December 1, 2022 that requires the use of the 2008 ISLLC Standards. This change will require that all principal practice rubrics be resubmitted to the Department through an updated Request for Proposals, which the Department will release to the field prior to December 1, 2022.

The ISLLC Standards are also contained in the regulations relating to the clinically rich principal preparation program, which expired on June 30, 2016. In an effort to conform the regulations to current practice, the Department also recommends making a technical amendment to repeal references in Sections 52.21 and 80-3.10 to the clinically rich principal preparation program.

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

(b) Local governments:

1. EFFECT OF RULE:

Evaluations of the school building leaders under the new standards will go into effect after December 1, 2022. In addition, the proposed amendment requires that any evaluation of principals conducted on or after December 1, 2022 shall be aligned to the PSELs. However, nothing shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on and after December 1, 2022 that requires the use of the 2008 ISLLC Standards. This change will require that all principal practice rubrics be resubmitted to the Department through an updated Request for Proposal, which the Department will release to the field prior to December 1, 2022.

The ISLLC Standards are also contained in the regulations relating to the clinically rich principal preparation program, which expired on June 30, 2016. In an effort to conform the regulations to current practice, the Department also recommends making a technical amendment to repeal references in Sections 52.21 and 80-3.10 to the clinically rich principal preparation program.

It is anticipated that the proposed amendment will come before the Board at its December 2017 meeting, and the amendment will be effective as a permanent rule on December 27, 2017.

2. COMPLIANCE REQUIREMENTS:
Currently, the professional practice and evaluation of in-service principals as well as program registration standards for school building leader programs are aligned to the 2008 ISLLC standards. The proposed amendment requires that all school building leader programs that are registered or seek registration under Section 52.21 of the Commissioner's Regulations on or after December 1, 2020 be aligned to the PSELs, with modifications as recommended by the Principal Project Advisory Team.

The proposed amendment establishes new professional practice guidelines and expectations for all principals. Any evaluations of the school building leaders under the new standards will go into effect after December 1, 2022. In addition, the proposed amendment requires that any evaluation of principals conducted on or after December 1, 2022 shall be aligned to the PSELs, with modifications as determined by the Board of Regents. However, nothing shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on December 1, 2022 that requires the use of the 2008 ISLLC Standards. This change will require that all principal practice rubrics be resubmitted to the Department through an updated Request for Proposals, which the Department will release to the field prior to December 1, 2022.

The ISLLC Standards are also contained in the regulations relating to the clinically rich principal preparation program, which expired on June 30, 2016. In an effort to conform the regulations to current practice, the Department also recommends making a technical amendment to repeal references in Sections 52.21 and 80-3.10 to the clinically rich principal preparation program.

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

4. COMPLIANCE COSTS:
The proposed amendment does not impose any compliance costs on local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:
The proposed amendments do not impose any additional technological requirements on districts or BOCES.

6. MINIMIZING ADVERSE IMPACT:
The proposed amendment is based on the recommendations from the Principal Project Advisory Team and represent a consensus of this team of experts. School districts and BOCES have until December 1, 2022 to prepare for implementation of principal evaluations aligned with the PSELs. This time is designed to minimize any adverse impact on the field resulting from this transition.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:
This proposed amendment applies to all principal preparation programs and school districts and boards of cooperative educational services, including those in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

2. REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:
Currently, the professional practice and evaluation of in-service principals as well as program registration standards for school building leader programs are aligned to the 2008 ISLLC standards. The proposed amendment requires that all school building leader programs that are registered or seek registration under Section 52.21 of the Commissioner's Regulations on or after December 1, 2020 be aligned to the PSELs, with modifications as recommended by the Principal Project Advisory Team.

The proposed amendment establishes new professional practice guidelines and expectations for all principals. Any evaluations of the school building leaders under the new standards will go into effect after December 1, 2022. In addition, the proposed amendment requires that any evaluation of principals conducted on or after December 1, 2022 shall be aligned to the PSELs, with modifications as determined by the Board of Regents. However, nothing shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on December 1, 2022 that requires the use of the 2008 ISLLC Standards. This change will require that all principal practice rubrics be resubmitted to the Department through an updated Request for Proposals, which the Department will release to the field prior to December 1, 2022.

The ISLLC Standards are also contained in the regulations relating to the clinically rich principal preparation program, which expired on June 30, 2016. In an effort to conform the regulations to current practice, the Department also recommends making a technical amendment to repeal references in Sections 52.21 and 80-3.10 to the clinically rich principal preparation program.

3. COSTS:
The proposed amendment does not impose any costs.

4. MINIMIZING ADVERSE IMPACT:
The proposed amendment is based on the recommendations from the Principal Project Advisory Team and represents a consensus of this team of experts. The amendment applies equally to all principal preparation programs and school districts and boards of cooperative educational services across the state in order to ensure that the same standards apply across the State. No alternatives were considered.

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

Job Impact Statement

The purpose of the proposed amendment is to establish new professional practice guidelines and expectations for all principals called the Professional Standards for Educational Leaders (PSELs). Currently, the professional practice and evaluation of in-service principals as well as program registration standards for school building leader programs are aligned to the 2008 ISLLC standards. The proposed amendment requires that all school building leader programs that are registered or seek registration under section 52.21 of the Commissioner's Regulations on or after December 1, 2020 be aligned to the PSELs, with modifications as recommended by the Principal Project Advisory Team.

The proposed amendment establishes new professional practice guidelines and expectations for all principals. Any evaluations of the school building leaders under the new standards will go into effect after December 1, 2022. In addition, the proposed amendment requires that any evaluation of principals conducted on or after December 1, 2022 shall be aligned to the PSELs, with modifications as determined by the Board of Regents. However, nothing shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on December 1, 2022 that requires the use of the 2008 ISLLC Standards. This change will require that all principal practice rubrics be resubmitted to the Department through an updated Request for Proposals, which the Department will release to the field prior to December 1, 2022.

The ISLLC Standards are also contained in the regulations relating to the clinically rich principal preparation program, which expired on June 30, 2016. In an effort to conform the regulations to current practice, the Department also recommends making a technical amendment to repeal references in Sections 52.21 and 80-3.10 to the clinically rich principal preparation program.

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

Department of Financial Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure

I.D. No. DFS-39-17-00002-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 52.73 to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 301, 3201, 3216(l), 3217, 3221(h), (l)(7-a), 4303(l-1), (ll), 4304(l), 4308(a), 4328(b)(1), art. 49; Public Health Law, art. 49; and 45 C.F.R. section 156.122(c)

Subject: Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure.

Purpose: Provide a formulary exception process for medication for the detoxification or maintenance treatment of a substance use disorder.

Text of proposed rule: A new section 52.73 is added as follows:

§ 52.73 Formulary exception process for medication for the detoxification or maintenance treatment of a substance use disorder.

(a) Every insurer that delivers or issues for delivery in this state an ac-

cident and health insurance policy that provides hospital, surgical, or medical expense coverage and also provides coverage for medication for the detoxification or maintenance treatment of a substance use disorder shall include in the policy processes that allow an insured, the insured's designee, or the insured's prescribing physician (or other prescriber, as appropriate) to request a formulary exception and gain access to clinically appropriate medication for the detoxification or maintenance treatment of a substance use disorder not otherwise covered by the policy (a request for formulary exception). With respect to the process for such a formulary exception, an insurer shall follow the process and procedures specified in Insurance Law Article 49 or Public Health Law Article 49, as applicable, except as otherwise provided in this section.

(b) Standard formulary exception request. (1) An insurer shall have a process for an insured, the insured's designee, or the insured's prescribing physician (or other prescriber) to request a standard review of a decision that a medication for the detoxification or maintenance treatment of a substance use disorder drug is not covered by the policy.

(2) An insurer shall make a determination on a standard exception request and notify the insured or the insured's designee and the prescribing physician (or other prescriber, as appropriate) of its coverage determination no later than 72 hours following receipt of the request.

(3) An insurer that grants a standard exception request shall provide coverage of the non-formulary medication for the detoxification or maintenance treatment of a substance use disorder for the duration of the prescription, including refills.

(c) Expedited formulary exception request. (1) An insurer shall have a process for an insured, the insured's designee, or the insured's prescribing physician (or other prescriber) to request an expedited review of a decision that a medication for the detoxification or maintenance treatment of a substance use disorder is not covered by the policy based on exigent circumstances.

(2) Exigent circumstances exist when an insured is suffering from a health condition that may seriously jeopardize the insured's life, health, or ability to regain maximum function or when an insured is undergoing a current course of treatment using a non-formulary medication for the detoxification or maintenance treatment of a substance use disorder.

(3) An insurer shall make a determination on an expedited review request based on exigent circumstances and notify the insured or the insured's designee and the prescribing physician (or other prescriber, as appropriate) of its coverage determination no later than 24 hours following receipt of the request.

(4) An insurer that grants an exception based on exigent circumstances shall provide coverage of the non-formulary medication for the detoxification or maintenance treatment of a substance use disorder for the duration of the exigency.

(d) Notice. An insurer that denies an exception request under subdivision (b) or (c) of this section shall provide written notice of its determination to the insured or the insured's designee and the prescribing physician (or other prescriber, as appropriate). The written notice shall be considered a final adverse determination under Insurance Law section 4904 or Public Health Law section 4904, as applicable. Written notice shall also include the name or names of clinically appropriate medications for the detoxification or maintenance treatment of a substance use disorder covered by the insurer to treat the insured.

(e) External appeal. (1) If an insurer denies a request for an exception under subdivision (b) or (c) of this section, then the insurer shall have a process for the insured, the insured's designee, or the insured's prescribing physician (or other prescriber) to request that the denial of such request be reviewed by an external appeal agent certified by the Superintendent pursuant to Insurance Law section 4911 in accordance with Insurance Law Article 49 or Public Health Law Article 49, as appropriate.

(2) An external appeal agent shall make a determination on the external appeal and notify the insurer, the insured or the insured's designee, and the prescribing physician (or other prescriber, as appropriate) of its determination no later than: (i) 72 hours following the agent's receipt of the request, if the original request was a standard exception request under subdivision (b) of this section; or (ii) 24 hours following the agent's receipt of the request, if the original request was an expedited exception request under subdivision (c) of this section and the prescribing physician (or other prescriber) attests that exigent circumstances exist.

(3) An external appeal agent shall make a determination in accordance with Insurance Law section 4914(b)(4)(A) or Public Health Law section 4914(2)(d)(A), as applicable. When making a determination, the external appeal agent shall also consider whether the formulary medication for the detoxification or maintenance treatment of a substance use disorder covered by the insurer will be or has been ineffective, would not be as effective as the non-formulary medication for the detoxification or maintenance treatment of a substance use disorder, or would have adverse effects.

(4) If an external appeal agent overturns the insurer's denial of a standard exception request under subdivision (b) of this section, then the insurer shall provide coverage of the non-formulary medication for the detoxification or maintenance treatment of a substance use disorder for the duration of the prescription, including refills. If an external appeal agent overturns the insurer's denial of an expedited exception request under subdivision (c) of this section, then the insurer shall provide coverage of the non-formulary medication for the detoxification or maintenance treatment of a substance use disorder for the duration of the exige.

Text of proposed rule and any required statements and analyses may be obtained from: Eamon Rock, NYS Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 474-4567, email: Eamon.Rock@dfs.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority: Financial Services Law ("FSL") sections 202 and 302; Insurance Law ("IL") sections 301, 3201, 3216(l), 3217, 3221(h), 3221(l)(7-a), 4303(l-1) and (ll), 4304(l), 4308(a), and 4328(b)(1), and Article 49; Public Health Law ("PHL") Article 49; and 45 C.F.R. section 156.122(c).

FSL section 202 establishes the office of the Superintendent of Financial Services ("Superintendent"). FSL section 302 and IL section 301, in pertinent part, authorize the Superintendent to prescribe regulations interpreting the IL and to effectuate any power granted to the Superintendent in the IL, FSL, or any other law.

IL sections 3201 and 4308(a) empower the Superintendent with discretion to approve policy and contract forms after ensuring that they conform to the requirements of the Insurance Law and are not inconsistent with the law.

IL section 3217 authorizes the Superintendent to issue regulations to establish minimum standards, including standards for full and fair disclosure, for the form, content and sale of accident and health insurance policies and subscriber contracts of corporations organized under IL Articles 32 and 43 and PHL Article 44.

IL sections 3216(l), 3221(h), 4303(ll), 4304(l), and 4328(b)(1) taken together require all individual and small group policies and contracts delivered or issued for delivery in New York to provide essential health benefits, as defined under the federal Affordable Care Act, which include coverage for medication for the detoxification or maintenance treatment of a substance use disorder approved by the federal Food and Drug Administration ("FDA") for the detoxification or maintenance treatment of substance use disorder.

IL sections 3221(l)(7-b) and 4303(l-1) require that large group policies and contracts delivered or issued for delivery in New York provide coverage for medication for the detoxification or maintenance treatment of a substance use disorder approved by the FDA for the detoxification or maintenance treatment of substance use disorder.

IL Article 49 and PHL Article 49 provide the general structure of utilization review and the process for internal and external appeals of denials.

45 C.F.R. section 156.122(c) requires that all non-grandfathered individual and small group health plans provide an opportunity to request and gain access to any prescription drug that is not otherwise covered by the health plan.

2. Legislative objectives: IL sections 3216(l), 3221(h), 4303(ll), 4304(l), and 4328(b)(1) require individual and small group health insurance policies and contracts to cover essential health benefits and by extension medications for the detoxification or maintenance treatment of a substance use disorder. IL sections 3221(l)(7-a) and 4303(l-1) specifically require policies and contracts delivered or issued for delivery in New York to provide coverage for medication for the detoxification or maintenance treatment of a substance use disorder approved by the FDA for the detoxification or maintenance treatment of substance use disorder. IL Article 49 and PHL Article 49 provide internal review and external appeals processes to the insurer when determinations are made that are adverse to the insured.

In accordance with the requirements in 45 C.F.R. section 156.122(c) that all non-grandfathered individual and small group health plans provide an opportunity to request and gain access to any prescription drug that is not otherwise covered by the health plan, individual and small group health plans provide internal review and external appeals in accordance with IL Article 49 or PHL Article 49, as appropriate.

This amendment accords with the legislative objectives of IL sections 3216(l), 3221(h), 3221(l)(7-a), 4303(l-1), 4303(ll), 4304(l), 4328(b)(1), IL Article 49, and PHL Article 49 by codifying 45 C.F.R. section 156.122(c) in state law for individuals and small groups, and for large groups, to require that the plan provide a formulary exception process that allows an insured the opportunity to request an exception and gain access to medica-

tion for the detoxification or maintenance treatment of a substance use disorder not otherwise covered by the policy or contract when medically necessary. The amendment further accords with IL Article 49 and PHL Article 49 by ensuring that the internal review and external appeals processes are followed for these medications, and by providing greater consumer protection where required under 45 C.F.R. section 156.122(c).

3. Needs and benefits: While 45 C.F.R. section 156.122(c) requires a formulary exception process for all prescription drugs in all non-grandfathered individual or small group health insurance policies and contracts, the federal regulation does not apply to large group policies or contracts. Pursuant to IL sections 3221(l)(7-a) and 4303(l-1), large group policies and contracts that provide coverage for medical, major medical or similar comprehensive-type coverage must provide coverage for medication for the detoxification or maintenance treatment of a substance use disorder. Without this amendment, and unless the policy or contract stated that off-formulary drugs were covered when medically necessary, requests by an insured covered under a large group health insurance policy or contract to access medications not on the insurer's list of covered drugs for substance use disorder treatment would be subject to the grievance process in IL section 4802 and PHL section 4408-a. This is a different and less-consumer protective process than the process granted to an insured covered under an individual or small group policy or contract, and would not include the right to an external appeal.

Accordingly, this amendment would require large group policies and contracts to comply with Article 49 of the IL or PHL, as applicable, with respect to medication for the detoxification or maintenance treatment of a substance use disorder, in the same way individual and small group policies and contracts must comply with those requirements by virtue of the federal regulation. Additionally, while the federal regulation requires all non-grandfathered individual and small group policies and contracts to provide a formulary exception process with an internal review and external appeal, this amendment codifies in state regulation that formulary exceptions for medication for the detoxification or maintenance treatment of a substance use disorder are subject to Article 49 of the IL or PHL, as applicable, while preserving any greater consumer protection offered by 45 C.F.R. section 156.122(c).

4. Costs: Insurers may incur costs to file with the Superintendent new policy and contract forms for large groups in order to provide coverage for a formulary exception process for medication for the detoxification or maintenance treatment of a substance use disorder. It is difficult to assess the potential costs to insurers for a number of reasons. Insurers in the regular course of their insurance business file new policy and contract forms in response to changes in law or regulation, and the Department of Financial Services ("Department") developed model contract language for insurers to use that should mitigate any filing costs. Additionally, insurers may incur costs with respect to policies or contracts not subject to the federal regulation, which requires a formulary exception process, when providing the internal reviews and complying with the time frames contained in the amendment. These costs should be very limited or non-existent because the majority of insurers already have a formulary exception process in place for individual and small group policies and contracts due to the federal regulation. Further, large group insurers must comply with Article 49 of the IL or PHL, as applicable, in many other circumstances and insurers may leverage their existing processes to review requests for an insured to gain access to a medically necessary medication for the detoxification or maintenance treatment of a substance use disorder not otherwise covered by the policy or contract.

This amendment may impose costs on the Department because the Department will need to review amended policy and contract forms. However, any additional costs incurred by the Department should be limited because the need to refile forms will be a one-time only circumstance. In addition, as noted above, many insurers already have policies and contracts with such provisions in place. As such, the costs to the Department should be minimal and the Department expects to absorb the costs in its ordinary budget. The Department does not anticipate any need for revised rate filings for individual and small group coverage since the requirements to provide the formulary exception process are already applicable under the federal regulation and, with respect to large group coverage, any changes would be reflected in rating formulas based on the experience of the group.

This amendment will not impose compliance costs on any state or local government.

5. Local government mandates: This amendment imposes no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: As noted, insurers may need to file with the Superintendent new policy and contract forms for large groups in order to provide the processes that allow for a request for a formulary exception and the ability to gain access to clinically appropriate medication for the detoxification or maintenance treatment of a substance use disorder not otherwise covered by the policy or contract. However, the model contract language that the Department developed will greatly reduce any paperwork burden.

7. Duplication: This amendment, in part, overlaps with existing federal rules by codifying in state law current federal requirements and does not conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: The Department considered not promulgating this amendment and thus retain the different standards for formulary exceptions for large group policies and contracts and individual and small group policies and contacts. As legislative policy clearly indicates a preference for uniform treatment of medications for the detoxification or maintenance treatment of a substance use disorder across all group sizes by requiring coverage of these medications in all individual, small group, and large group policies or contracts, it would be inconsistent with this legislative policy for the formulary exceptions processes to differ based on group size.

9. Federal standards: The amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The amendment will take effect 60 days after publication of the notice of adoption in the State Register.

Regulatory Flexibility Analysis

1. Effect of rule: This amendment to the regulation applies to insurers in New York State that provide hospital, surgical, or medical expense coverage. Although most insurers are not small businesses, industry has asserted previously that certain insurers, in particular mutual insurers, subject to the regulation are small businesses but has not provided the Department of Financial Services ("Department") with specific insurers or the number of such entities. The amendment does not apply to local governments.

2. Compliance requirements: Since any insurer that is a small business is already required to comply with broader federal rules applying to prescription drugs for all individual and small group policies, any such insurer should not need to file new policy or contract forms with the Superintendent of Financial Services ("Superintendent") with respect to those polices. Any insurer that is a small business may need to file new policy or contract forms for any large group product in order to comply with the amendment.

No local government will have to undertake any reporting, recordkeeping, or other affirmative act to comply with the regulation.

3. Professional services: The Department does not anticipate that any insurer that is a small business affected by this amendment will need to retain professional services to comply with this amendment.

4. Compliance costs: Since insurers that are small businesses already are required to comply with federal regulations with respect to individual and small group policies, insurers should not need to incur costs to file new policy or contract forms with the Superintendent for those policies. Insurers that are small businesses may incur costs to file with the Superintendent new policy and contract forms for large groups in order to provide coverage for a formulary exception process for medication for the detoxification or maintenance treatment of a substance use disorder. It is difficult to assess the potential costs to insurers for a number of reasons. Insurers in the regular course of their insurance business file new policy and contract forms in response to changes in law or regulation, and the Department developed model contract language for insurers to use that should mitigate any filing costs. Additionally, insurers may incur costs with respect to policies or contracts that are not subject to the federal regulation, which requires a formulary exception process, when providing the internal reviews and complying with the time frames contained in the amendment. These costs should be very limited or non-existent because the majority of insurers already have a formulary exception process in place for individual and small group policies and contracts due to the federal regulation. Further, large group insurers must comply with Article 49 of the IL or PHL, as applicable, in many other circumstances and insurers may leverage their existing processes to review requests for an insured to gain access to a medically necessary medication for the detoxification or maintenance treatment of a substance use disorder not otherwise covered by the policy or contract.

5. Economic and technological feasibility: No insurer that is a small business affected by this amendment should experience any economic or technological impact as a result of the amendment.

6. Minimizing adverse impact: The Department considered the criteria in State Administrative Procedures Act ("SAPA") section 202-b(1) but the Department could not design the amendment to minimize any adverse impact on insurers that are small businesses because: (1) as to all individual and small group policies, the Department is preempted by federal regulation, and (2) any such design would create the type of disparate treatment that this amendment seeks to remedy.

7. Small business and local government participation: The Department is in compliance with SAPA section 202-b(6) by publishing the proposed amendment in the State Register and posting the proposed amendment on the Department's website.

Rural Area Flexibility Analysis
The Department of Financial Services finds that this regulation, which sets forth a required formulary exception process for medication for the detoxification or maintenance treatment of a substance use disorder, does not impose any additional burden on persons located in rural areas, and will not have an adverse impact on rural areas. This regulation applies uniformly to insurers that do business in both rural and non-rural areas of New York State. This regulation will not impose any additional costs on rural areas.

Job Impact Statement
The Department of Financial Services finds that this rule should have little or no negative impact on jobs and employment opportunities in this state. The rule applies directly to insurers authorized to do business in New York State and provides that every insurer that delivers or issues for delivery in this state an accident and health insurance policy that provides hospital, surgical, or medical expense coverage and provides coverage for medication for the detoxification or maintenance treatment of a substance use disorder shall include in the policy processes that allow a formulary exception and access to clinically appropriate medication for the detoxification or maintenance treatment of a substance use disorder not otherwise covered by the policy.

Department of Health

NOTICE OF ADOPTION

Managed Care Organizations

I.D. No. HLT-27-17-00005-A
Filing No. 770
Filing Date: 2017-09-12
Effective Date: 2017-09-27

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

Action taken: Amendment of section 98-1.11 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 4403(2)

Subject: Managed Care Organizations.

Purpose: To amend prior approval requirements pertaining to asset transfers for managed care organizations.

Text or summary was published in the July 5, 2017 issue of the Register, I.D. No. HLT-27-17-00005-P.

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

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

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

Assessment of Public Comment
The agency received no public comment.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Achievement and Investment in Merit Scholarship (NY-AIMS)

I.D. No. ESC-39-17-00003-E
Filing No. 763
Filing Date: 2017-09-11
Effective Date: 2017-09-11

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

Action taken: Addition of section 2201.16 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 669-g

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2015 term, which generally starts in August. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides New York high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in New York State. Five thousand awards, of $500 each, will be granted annually in 2015-16 and 2016-17. Decisions on applications for this Program are made prior to the beginning of the term. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately so that students can make informed choices and in order for HESC to process scholarship applications in a timely manner. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

Purpose: To implement The New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

Text of emergency rule: New section 2201.16 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.16 The New York State Achievement and Investment in Merit Scholarship (NY-AIMS).

(a) Definitions. As used in section 669-g of the Education Law and this section, the following terms shall have the following meanings:

(1) "Good academic standing" shall have the same meaning as set forth in section 665(6) of the education law.

(2) "Grade point average" shall mean the student's numeric grade calculated on the standard 4.0 scale.

(3) "Program" shall mean The New York State Achievement and Investment in Merit Scholarship codified in section 669-g of the education law.

(4) "Unmet need" for the purpose of determining priority shall mean the cost of attendance, as determined for federal Title IV student financial aid purposes, less all federal, State, and institutional higher education aid and the expected family contribution based on the federal formula.

(b) Eligibility. An applicant must:

(1) have graduated from a New York State high school in the 2014-15 academic year or thereafter; and

(2) enroll in an approved undergraduate program of study in a public or private not-for-profit degree granting post-secondary institution located in New York State beginning in the two thousand fifteen-sixteen academic year or thereafter; and

(3) have achieved at least two of the following during high school:

(i) Graduated with a grade point average of 3.3 or above;

(ii) Graduated with a "with honors" distinction on a New York State regents diploma or receive a score of 3 or higher on two or more advanced placement examinations; or

(iii) Graduated within the top fifteen percent of their high school class, provided that actual class rank may be taken into consideration; and

(4) satisfy all other requirements pursuant to section 669-g of the education law; and

(5) satisfy all general eligibility requirements provided in section 661 of the education law including, but not limited to, full-time attendance, good academic standing, residency and citizenship.

(c) Distribution and priorities. In each year, new awards made shall be proportionate to the total new applications received from eligible students enrolled in undergraduate study at public and private not-for-profit degree granting institutions. Distribution of awards shall be made in accordance with the provisions contained in section 669-g(3)(a) of the education law within each sector. In the event that there are more applicants who have the same priority than there are remaining scholarships or available funding, awards shall be made in descending order based on unmet need established at the time of application. In the event of a tie, distribution shall be made by means of a lottery or other form of random selection.

(d) Administration.

(1) Applicants for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.

(2) Recipients of an award shall:

(i) request payment annually at such times, on forms and in a manner specified by the corporation;

(ii) receive such awards for not more than four academic years of undergraduate study, or five academic years if the program of study normally requires five years as defined by the commissioner pursuant to Article 13 of the education law; and

(iii) provide any information necessary for the corporation to determine compliance with the program's requirements.

(e) Awards.

(1) The amount of the award shall be determined in accordance with section 669-g of the education law.

(2) Disbursements shall be made annually to institutions on behalf of recipients.

(3) Awards may be used to offset the recipient's total cost of attendance determined for federal Title IV student financial aid purposes or may be used in addition to such cost of attendance.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 9, 2017.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer The New York State Achievement and Investment in Merit Scholarship (NY-AIMS), hereinafter referred to as "Program", is codified within Article 14 of the Education Law. In particular, Part Z of Chapter 56 of the Laws of 2015 created the Program by adding a new section 669-g to the Education Law. Subdivision 6 of section 669-g of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 669-g to create The New York State Achievement and Investment in Merit Scholarship (NY-AIMS). The objective of this Program is to grant merit-based scholarship awards to New York State high school graduates who achieve academic excellence.

Needs and benefits:

The cost to attain a postsecondary degree has increased significantly over the years; alongside this growth, the financing of that degree has become increasingly challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. All federal student financial aid and a majority of state student financial aid programs are conditioned on economic need. Despite stagnant growth in household incomes, there continues to be far fewer academically-based financial aid programs, which are awarded to students regardless of assets or income. This has resulted in more limited financial aid options for those who are ineligible for need-based aid. Concurrently, greater numbers of students are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with student loan debt averaging $29,400. Many of these students feel burdened by their college loan debt, especially as they seek to start a family, buy a home, launch a business, or save for retirement.

This Program cushions the disparate growth in the cost of a postsecondary education by providing New York State high school graduates who excel academically with merit-based scholarships to support their cost of attendance at any college or university located in the State for up to four years of undergraduate study (or five years if enrolled in a five-year program). Five thousand awards, of $500 each, will be granted annually in 2015-16 and 2016-17.

Costs:

a. It is anticipated that there will be no new costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is $2.5 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to local governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application for eligibility and payment together with supporting documentation.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 669-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal definitions/methodology concerning unmet need, expected family contribution, and cost of attendance.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local

governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.16 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides merit-based scholarships to students who pursue their undergraduate degree at any college or university located in New York State. Providing students with direct financial assistance will encourage them to attend college in New York State and possibly seek employment opportunities in the State as well, which will benefit the State.

EMERGENCY RULE MAKING

New York State Get on Your Feet Loan Forgiveness Program

I.D. No. ESC-39-17-00004-E

Filing No. 764

Filing Date: 2017-09-11

Effective Date: 2017-09-11

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

Action taken: Addition of section 2201.15 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 679-g

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students who receive their undergraduate degree from a college or university located in New York State in December 2014 and thereafter. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible applicants. The statute provides for student loan relief to such college graduates who continue to live in New York State upon graduation, earn less than $50,000 per year, participate in either the federal Pay as You Earn (PAYE) or Income Based Repayment (IBR) program, which cap a federal student loan borrower's payments at 10 percent of discretionary income, and apply for this program within two years after graduating from college. Eligible applicants will have up to twenty-four payments made on their behalf towards their federal income-based repayment plan commitment. For those students who graduated in December 2014, their first student loan payment will become due upon the expiration of their grace period in June 2015. Therefore, it is critical that the terms of this program as provided in the regulation be effective immediately in order for HESC to process applications so that timely payments can be made on behalf of program recipients. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Get on Your Feet Loan Forgiveness Program.

Purpose: To implement the New York State Get on Your Feet Loan Forgiveness Program.

Text of emergency rule: New section 2201.15 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.15 New York State Get on Your Feet Loan Forgiveness Program.

(a) Definitions. As used in section 679-g of the education law and this section, the following terms shall have the following meanings:

(1) "Adjusted gross income" shall mean the income used by the U.S. Department of Education to qualify the applicant for the federal income-driven repayment plan.

(2) "Award" shall mean a New York State Get on Your Feet Loan Forgiveness Program award pursuant to section 679-g of the education law.

(3) "Deferment" shall have the same meaning applicable to the William D. Ford Federal Direct Loan Program as set forth in 34 CFR Part 685.

(4) "Delinquent" shall mean the failure to pay a required scheduled payment on a federal student loan within thirty days of such payment's due date.

(5) "Forbearance" shall have the same meaning applicable to the William D. Ford Federal Direct Loan Program as set forth in 34 CFR Part 685.

(6) "Income" shall mean the total adjusted gross income of the applicant and the applicant's spouse, if applicable.

(7) "Program" shall mean the New York State Get on Your Feet Loan Forgiveness Program.

(8) "Undergraduate degree" shall mean an associate or baccalaureate degree.

(b) Eligibility. An applicant must satisfy the following requirements:

(1) have graduated from a high school located in the State or attended an approved State program for a State high school equivalency diploma and received such diploma. An applicant who received a high school diploma, or its equivalent, from another state is ineligible for a Program award;

(2) have graduated and obtained an undergraduate degree from a college or university located in the State in or after the two thousand fourteen-fifteen academic year;

(3) apply for this program within two years of obtaining such undergraduate degree;

(4) not have earned a degree higher than an undergraduate degree at the time of application;

(5) be a participant in a federal income-driven repayment plan whose payment amount is generally ten percent of discretionary income;

(6) have income of less than fifty thousand dollars;

(7) comply with subdivisions three and five of section 661 of the education law;

(8) work in the State, if employed. A member of the military who is on active duty and for whom New York is his or her legal state of residence shall be deemed to be employed in NYS;

(9) not be delinquent on a federal student loan or in default on a student loan made under any statutory New York State or federal education loan program or repayment of any New York State award; and

(10) be in compliance with the terms of any service condition imposed by a New York State award.

(c) Administration.

(1) An applicant for an award shall apply for program eligibility at such times, on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility.

(2) A recipient of an award shall:

(i) request payment at such times, on such forms and in a manner as prescribed by the corporation;

(ii) confirm he or she has adjusted gross income of less than fifty thousand dollars, is a resident of New York State, is working in New York State, if employed, and any other information necessary for the corporation to determine eligibility at such times prescribed by the corporation. Said submissions shall be on forms or in a manner prescribed by the corporation;

(iii) notify the corporation of any change in his or her eligibility

status including, but not limited to, a change in address, employment, or income, and provide the corporation with current information;

(iv) not receive more than twenty four payments under this program; and

(v) provide any other information or documentation necessary for the corporation to determine compliance with the program's requirements.

(d) Amounts and duration.

(1) The amount of the award shall be equal to one hundred percent of the recipient's established monthly federal income-driven repayment plan payment whose payment amount is generally ten percent of discretionary income and whose payment is based on income rather than loan debt.

(2) In the event the established monthly federal income-driven repayment plan payment is zero or the applicant is otherwise not obligated to make a payment, the applicant shall not qualify for a Program award.

(3) Disbursements shall be made to the entity that collects payments on the federal student loan or loans on behalf of the recipient on a monthly basis.

(4) A maximum of twenty-four payments may be awarded, provided the recipient continues to satisfy the eligibility requirements set forth in section 679-g of the education law and the requirements set forth in this section.

(e) Disqualification. A recipient shall be disqualified from receiving further award payments under this program if he or she fails to satisfy any of the eligibility requirements, no longer qualifies for an award, or fails to respond to any request for information by the corporation.

(f) Renewed eligibility. A recipient who has been disqualified pursuant to subdivision (e) may reapply for this program and receive an award if he or she satisfies all of the eligibility requirements set forth in section 679-g of the education law and the requirements set forth in this section.

(g) Repayment. A recipient who is not a resident of New York State at the time a payment is made under this program shall be required to repay such payment or payments to the corporation. In addition, at the corporation's discretion, a recipient may be required to repay to the corporation any payment made under this program that, at the time payment was made, should have been disqualified pursuant to subdivision (e). If a recipient is required to repay any payment or payments to the corporation, the following provisions shall apply:

(1) Interest shall begin to accrue on the day such payment was made on behalf of the recipient. In the event the recipient notifies the corporation of a change in residence within 30 days of such change, interest shall begin to accrue on the day such recipient was no longer a New York State resident.

(2) The interest rate shall be fixed and equal to the rate established in section 18 of the New York State Finance Law.

(3) Repayment must be made within five years.

(4) Where a recipient has demonstrated extreme hardship as a result of a disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, waive or defer payment, extend the repayment period, or take such other appropriate action.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 9, 2017.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Get on Your Feet Loan Forgiveness Program ("Program") is codified within Article 14 of the Education Law. In particular, Part C of Chapter 56 of the Laws of 2015 created the Program by adding a new section 679-g to the Education Law. Subdivision 4 of section 679-g of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 679-g to create the "New York State Get on Your Feet Loan Forgiveness Program" (Program). The objective of this Program is to ease the burden of federal student loan debt for recent New York State college graduates.

Needs and benefits:

More than any other time in history, a college degree provides greater opportunities for graduates than is available to those without a postsecondary degree. However, financing that degree has also become more challenging. According to a June 9, 2014 Presidential Memorandum issued by President Obama, over the past three decades, the average tuition at a public four-year college has more than tripled, while a typical family's income has increased only modestly. More students than ever are relying on loans to pay for college. Today, 71 percent of those earning a bachelor's degree graduate with debt, which averages $29,400. Many of these students feel burdened by debt, especially as they seek to start a family, buy a home, launch a business, or save for retirement. To ensure that student debt is manageable, the federal government enacted income-driven repayment plans, such as the Pay as You Earn (PAYE) plan, which caps a federal student loan borrower's payments at 10 percent of income.

Although New York's public colleges and universities offer among the lowest tuition in the nation, currently the average New York student graduates from college with a four-year degree saddled with more than $25,000 in student loans. Mounting student debt makes it difficult for recent graduates to deal with everyday costs of living, which often increases the amount of credit card and other debt they must take on in order to survive. To help mitigate the disparate growth in the cost of financing a postsecondary education, this Program offers financial aid relief to recent college graduates by providing up to twenty-four payments towards an eligible applicant's federal income-based student loan repayment plan commitment. Students who receive their undergraduate degree from a college or university located in New York State in December 2014 and thereafter, who continue to live in New York State upon graduation, earn less than $50,000 per year, participate in either the federal Pay as You Earn (PAYE) or applicable federal Income Based Repayment (IBR) program, and apply for this Program within two years after graduating from college are eligible for this Program.

Costs:

a. It is anticipated that there will be no new costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is $5.2 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to local governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application for eligibility and payment together with supporting documentation.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to the U.S. Department of Education with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms used in the regulation as well as the administration of the Program. Given the statutory language as set forth in section 679-g of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government. Since this Program is intended to supplement federal repayment programs, efforts were made to align the Program with the federal programs.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which benefits rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.15 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that eases the burden of federal student loan debt for recent New York State college graduates who continue to live in the State. Providing students with direct financial assistance will encourage students to attend college in New York State and remain in the State following graduation, which benefits the State as well.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Home and Community Based Services (HCBS) Waiver and Non-Waiver Enrolled Respite Services

I.D. No. PDD-29-17-00005-A

Filing No. 781

Filing Date: 2017-09-12

Effective Date: 2017-09-27

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

Action taken: Amendment of Parts 633, 635 and 686 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Home and Community Based Services (HCBS) Waiver and Non-Waiver Enrolled Respite Services.

Purpose: To amend the existing regulations for HCBS Waiver Respite and create five separate categories of Respite.

Text or summary was published in the July 19, 2017 issue of the Register, I.D. No. PDD-29-17-00005-EP.

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

Text of rule and any required statements and analyses may be obtained from: Office of Counsel, Bureau of Policy and Regulatory Affairs, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd Floor, Albany, NY 12229, (518) 474-7700, email: rau.unit@opwdd.ny.gov

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

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

This document contains a response to the public comment submitted during the public comment period for emergency/proposed regulations concerning Respite services.

Comment: A commenter stated that it would be a burden on accounting departments of providers and agencies to have to begin billing for the five separate categories of Respite for a July 1, 2017 effective date.

Response: No changes to the proposed regulations were made in response to this comment. The regulations were filed on an emergency basis to ensure continuity of critical services for individuals with developmental disabilities. Additionally, the emergency filing was necessary to incorporate service design changes based on stakeholder feedback as well as federal government approval requirements regarding the proposed service changes.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rider Q – Standby Rate Pilot

I.D. No. PSC-39-17-00007-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 proposal by Consolidated Edison Company of New York, Inc. to revise its electric tariff, P.S.C. No. 10, to implement Rider Q, Standby Rate Pilot, pursuant to Commission Order issued January 25, 2017 in Case 16-E-0060.

Statutory authority: Public Service Law, section 66(12)(b)

Subject: Rider Q – Standby Rate Pilot.

Purpose: To consider the implementation of Rider Q – Standby Rate Pilot.

Substance of proposed rule: The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) on August 31, 2017, to amend its electric tariff schedule, P.S.C. No. 10 – Electricity. Con Edison proposes to implement Rider Q – Standby Rate Pilot pursuant to the Commission's Order Approving Electric and Gas Rate Plans, issued January 25, 2017 in Case 16-E-0060. The Standby Rate Pilot will consist of two options: Option 1 – Targeted 10-Year Exemption or Pilot Rates; and Option 2 – Standby/Export Pilot Rates. With this filing, Con Edison proposes to implement Option 2 which will allow standby customers under Con Edison's full service tariff schedule and its PASNY tariff schedule to opt into one or more of three options: Option A – Customer Chooses Contract Demand; Option B – Locational Variant Daily As-used Demand Pricing; and Option C – Export Pilot Credit. Under Option A, a customer may choose to revise its contract demand by giving written notice at least 10 days prior to the commencement of a billing period. Option B provides alternative pricing and time periods for the as-used daily demand delivery charges, per kW of daily peak demand for participating customers. Option C offers a credit for Service Classification No. 11 – Buy-Back Service customers that export during the predefined measurement periods for the applicable summer periods. The proposed amendments have an effective date of January 1, 2018. The full text of the filing may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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-0060SP4)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Submeter Electricity and Waiver Request

I.D. No. PSC-39-17-00008-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 the petition of Waverly Owner I LLC to submeter electricity at 555 Waverly Avenue, Brooklyn, New York and request for 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: Petition to submeter electricity and waiver request.

Purpose: To consider the petition to submeter electricity and waiver request of 16 NYCRR section 96.5(k)(3).

Substance of proposed rule: The Commission is considering the revised petition of Waverly Owner I LLC (Owner) filed on September 7, 2017, to submeter electricity at 555 Waverly Avenue, Brooklyn, 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 petition 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 requested 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-0242SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether a Proposed Agreement for the Provision of Water Service by Saratoga Water Services, Inc. is in the Public Interest

I.D. No. PSC-39-17-00009-P

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

Proposed Action: The Public Service Commission is considering the petition of Saratoga Water Services, Inc. for the terms of a service agreement and a waiver of the company's tariff.

Statutory authority: Public Service Law, sections 4(1), 20(1) and 89-b

Subject: Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.

Purpose: To consider the terms of a service agreement and waiver.

Text of proposed rule: The Commission is considering a petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order: (a) approving the terms and conditions of a certain "Agreement For The Provision of Water Service" dated February 11, 2016 (Agreement) between Saratoga and Krunim, Inc. as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement is in the public interest; (c) waiving Saratoga's tariff provisions to the extent they are inconsistent with the Agreement; and (d) waiving the applicability of the provisions of 16 NYCRR Parts 501 and 502 to the extent they are inconsistent with the Agreement. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(16-W-0191SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver of Certain Rules and Requirements Pertaining to Cable Television Franchise

I.D. No. PSC-39-17-00010-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 for certain waivers filed by Frontier Communications of New York, Inc. in connection with a cable television franchise for the Town of Blooming Grove, Orange County.

Statutory authority: Public Service Law, sections 215, 216 and 221

Subject: Waiver of certain rules and requirements pertaining to cable television franchise.

Purpose: To determine whether to waive any regulations.

Substance of proposed rule: The Commission is considering a petition filed by Frontier Communications of New York, Inc. (Frontier), on July 19, 2017, for certain waivers in connection with its proposed cable television franchise agreement with the Town of Blooming Grove. Frontier requests full or partial waivers of 16 NYCRR § 890 and 895 with respect to build out requirements and installation intervals. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(17-V-0430SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether to Direct New York State Electric & Gas to Complete Electric Facility Upgrades at No Charge to Hanehan

I.D. No. PSC-39-17-00011-P

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

Proposed Action: The Commission is considering the petition of Hanehan Family Dairy, LLC (Hanehan) for an order directing NYSEG to complete electric facility upgrades needed to serve Hanehan, that NYSEG undertake those upgrades at its own expense and to refund $78,313.95.

Statutory authority: Public Service Law, sections 65(1) and 66(1)

Subject: Whether to direct New York State Electric & Gas to complete electric facility upgrades at no charge to Hanehan.

Purpose: To determine financial responsibility between NYSEG and Hanehan for the electric service upgrades to Hanehan.

Substance of proposed rule: The Commission is considering the petition filed by Hanehan Family Dairy, LLC (Hanehan) on August 24, 2017, seeking an order directing New York State Electric & Gas Corporation (NYSEG) to complete electric facility upgrades needed to serve the electrical needs of Hanehan. In addition, Hanehan seeks an order directing NYSEG to undertake those upgrades at its own expense, that NYSEG return the $78,313.95 already paid by Hanehan to NYSEG for the upgrades and directing NYSEG to accept a letter of credit to assure future revenues as required by the tariff. Hanehan also seeks the Commission's review of NYSEG's calculation of revenues that would offset the costs of the new facilities required to serve Hanehan's increased load. The petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(17-E-0527SP1)

Department of State

NOTICE OF ADOPTION

Cease and Desist Zone for Queens and Bronx Counties

I.D. No. DOS-30-17-00002-A
Filing No. 767
Filing Date: 2017-09-12
Effective Date: 2017-10-01

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

Action taken: Amendment of section 175.17 of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-h

Subject: Cease and desist zone for Queens and Bronx Counties.

Purpose: To adopt cease and desist zones for Queens and Bronx Counties.

Text of final rule: 19 NYCRR 175.17 is amended as follows:

Section 175.17. Prohibitions in relation to solicitation and unlawful discriminatory practice

(a)

(1) No broker or salesperson shall induce or attempt to induce an owner to sell or lease any residential property or to list same for sale or lease by making any representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, age, sex, sexual orientation, disability, gender identity, military status, familial [statues] *status* or any other protected category under any Federal, State or local law applicable to the activities of real estate licensees in New York State.[)]

(2)

(i) No licensed real estate broker or salesperson shall solicit the sale, lease or the listing for sale or lease of residential property after such licensee has received written notice from an owner thereof that such owner or owners do not desire to sell, lease or list such property.

(ii) Notice provided under the provisions of this subdivision to a real estate broker shall constitute notice to all associate brokers and salespersons who are employed by the real estate broker.

(3)

(i) No licensed real estate broker or salesperson shall solicit the sale, lease or the listing for sale or lease of residential property from *an* owner of residential property located in a designated cease-and-desist zone if such owner has filed a cease-and-desist notice with the Department of State indicating that such owner or owners do not desire to sell, lease or list their residential property and do not desire to be solicited to sell, lease or list their residential property.

(ii) The following geographic areas are designated as cease-and-desist zones, and, unless sooner redesignated, the designation for the following cease-and-desist zones shall expire on the following dates:

Zone	Expiration Date
County of Bronx	[August 1, 2014] *October 1, 2022*

Within the County of Bronx as follows:

[All that] *The sections of the* area of land in the County of Bronx, City of New York, *within the neighborhood commonly referred to as Country Club,* [otherwise known as Community Districts 10, 11 and 12] and *more specifically* bounded *by* and described as follows: [Beginning at a point at the intersection of Bronx County and Westchester County boundary and Long Island Sound; thence southerly along Long Island Sound while including City Island to East River; thence westerly along East River to Westchester Creek; thence northerly, northwesterly and northeasterly along Westchester Creek to East Tremont Avenue; thence southwesterly, northwesterly and westerly along East Tremont Avenue to Bronx River Parkway; thence northerly and northeasterly along Bronx River Parkway to East 233rd Street; thence westerly along East 233rd Street to Van Cortlandt Park East; thence northerly along Van Cortlandt Park East to the boundary of Westchester County and Bronx County; thence easterly along the boundary of Westchester County and Bronx County to Long Island Sound and the point of beginning]

All the land west of the Eastchester Bay south of Griswold Avenue to Bruckner Expressway; thence southerly along the Bruckner Expressway/ Throgs Neck Expressway to Layton Avenue; then easterly to the Eastchester Bay.

Zone	Expiration Date
County of Queens	[August 1, 2014] *October 1, 2022*

Within the County of Queens as follows:

The sections of the area of land in the County of Queens, City of New York, within the neighborhood commonly referred to as College Point, and more specifically bounded by and described as follows:

Beginning at the intersection of interstate 678 and the East River; thence southerly along interstate 678 to the intersection of interstate 678 and 14th Avenue; thence westerly along 14th Avenue to College Point Boulevard; thence southerly along College Point Boulevard to 28th Avenue; thence westerly to Flushing Bay; thence northeasterly along Flushing Bay and the East River to the point of the beginning.

The sections of the area of land in the County of Queens, City of New York, within the neighborhoods commonly referred to as: Bay Side, Bay Terrace and Murray Hill, and more specifically bounded by and described as follows:

Beginning at the intersection of the Cross Island Parkway and 149th Street; thence southerly along 149th Street to 46th Avenue; thence easterly along 46th Avenue and continuing along Hollis Court Boulevard to interstate 495; thence easterly along interstate 495 to the Cross Island Parkway; thence northerly along the Cross Island Parkway to the point of the beginning.

[All that area of land in the County of Queens, City of New York, otherwise known as Bayside, Bellerose, Queens Village, Rockaways,

South Ozone Park, Woodhaven and Whitestone bounded and described as follows:

Bayside: Located in northern Queens. Francis Lewis Boulevard to the west, 233rd Street to the east, Grand Central Parkway to the south and Cross Island Parkway to the north and bounded by the geographical boundaries of the following zip codes: 11361, 11359, 11360, and 11364.

Bellerose: Little Neck Parkway to the east, Grand Central Parkway to the west, the Credmoor State Hospital grounds to the north and Braddock and Jamaica Avenues to the south and bounded by the geographical boundary of the zip code 11426.

Queens Village: Nassau County and Belmont Park to the east, Cambria Heights and St. Albans to the south. Hollis to the west, and Bellerose and Holliswood to the north and bounded by the geographical boundaries of the following zip codes: 11427, 11428 and 11429.

Rockaways: Located in southern Queens. 11 miles long peninsula with Jamaica Bay to the north, the Atlantic Ocean to the south and Nassau County to the east and bounded by the geographical boundaries of the following zip codes: 11690, 11691, 11692, 11693, 11694, 11695 and 11697.

South Ozone Park: Van Wyck Expressway to the east, Aqueduct Race Track to the west, Liberty Avenue to the north and Conduit Avenue and Belt Parkway to the south and bounded by the geographical boundaries of the zip code 11420.

Woodhaven: Forest Park and Park Lane South to the north, Richmond Hill to the east, Ozone Park and Atlantic Avenue to the south and borough of Brooklyn to the west and bounded by the geographical boundaries of the zip code 11421.

Whitestone: Located in northern Queens between the East River to the north and 25th Avenue to the south, Whitestone Bridge to the west and the Throgs Neck Bridge to the east and bounded by the geographical boundaries of the zip code 11357.

Cease and Desist Zone
(Mill Basin/Brooklyn)

Zone	Expiration Date
County of Kings (Brooklyn)	November 30, 2012

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, otherwise known as the communities of Mill Basin, Mill Island, Bergen Beach, Futurama, Marine Park and Madison Marine, bounded and described as follows: Beginning at a point at the intersection of Flatlands Avenue and the northern prolongation of Paerdegat Basin, thence southwesterly along Flatlands Avenue to Avenue N; thence westerly along Avenue N to Nostrand Avenue; thence southerly along Nostrand Avenue to Kings Highway; thence southwesterly along Kings Highway to Ocean Avenue; thence southerly along Ocean Avenue to Shore Parkway; thence northeasterly, southeasterly, northerly, northeasterly and northerly along Shore Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin and the northern prolongation of Paerdegat Basin; thence northwesterly along Paerdegat Basin and northern prolongation of Paerdegat Basin to Flatlands Avenue and the point of beginning.]

(iii) The names and addresses of owners who have filed a cease-and-desist notice with the Department of State shall be compiled according to the street address for each cease-and-desist zone. Following the first compilation of a list, the list shall be revised and updated annually on or before December 31st. Individual lists shall be identified by geographic area and year.

(iv) A copy of each cease-and-desist list shall be available for inspection at the following offices of the Department of State:

Department of State
Division of Licensing Services
[80 South Swan Street, 10th Floor]
99 Washington Avenue
Albany, New York 12231-0001

Department of State
Division of Licensing Services
State Office Building Annex
164 Hawley Street
Binghamton, New York 13901-4053

Department of State
Division of Licensing Services
65 Court Street
Buffalo, New York 14202-3471

Department of State
Division of Licensing Services Hughes State Office Building Syracuse, New York 13202-1428

Department of State
Division of Licensing Services
State Office Building Veterans Memorial Highway Hauppauge, New York 11788-5501

[Department of State
Division of Licensing Services
114 Old Country Road
Mineola, New York 11501-4459]

Department of State
Division of Licensing Services
123 William Street
New York, New York 10038-3804

(v) The cost of each list [complied] *compiled* pursuant to this subdivision shall be $10 and shall be available upon written request to the following address:

Department of State
Division of Licensing Services
123 William Street
New York, New York 10038-3804

(vi) The original cease-and-desist notice shall be filed with the Department of State's Division of Licensing Services at 123 William Street, New York, New York 10038-3804, and shall be available for public inspection and copying upon written request and appointment.

(vii) For the purposes of Real Property Law, section 441-c, it shall not be a demonstration of untrustworthiness or incompetence for a licensee to solicit an owner who had filed a cease-and-desist notice with the Department of State if the owner's name and address do not appear on the current cease-and-desist list compiled by the Department of State pursuant to subparagraph (iii) of this paragraph.

(4)

(i) For the purposes of this subdivision, solicitation shall mean an attempt to purchase or rent or an attempt to obtain a listing of property for sale, for rent or for purchase. Solicitation shall include but not be limited to use of the telephone, mails, delivery services, personal contact or otherwise causing any solicitation, oral or written, direct or by agent:

([a] *a*) to be delivered or presented to the owner or anyone else at the owner's home address;

([b] *b*) to be left for the owner or anyone else at the owner's home address; or

([c] *c*) to be placed on any vehicle, structure or object located on the owner's premises.

(ii) Solicitation shall not include classified advertising in regularly printed periodicals that are not primarily real estate related; advertisements placed in public view if they are not otherwise in violation of this subdivision; or radio and television advertisements.

(5) For the purposes of this subdivision, residential property shall mean one-, two- or three-family houses, including a cooperative apartment or condominium.

(b) No real estate broker or salesperson shall engage in an unlawful discriminatory practice, as proscribed by any Federal, State or local law applicable to the activities of real estate licensees in New York State. A finding by any Federal, State or local agency or court of competent jurisdiction that a real estate broker or salesperson has engaged in unlawful discriminatory practice in the performance of licensed real estate activities shall be presumptive evidence of untrustworthiness and will subject such licensee to discipline, including a proceeding for revocation. Nothing herein shall limit or restrict the department from otherwise exercising its authority pursuant to section 441-c of the Real Property Law.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 175.17(a)(3) and (4).

Text of rule and any required statements and analyses may be obtained from: David Mossberg, NYS Dept. of State, 123 William St., 20th FL., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Non-substantive changes were made in 175.17(a)(3)(ii) in that the re-

spective expiration dates for the proposed zones in Bronx and Queens Counties were changed from September 1, 2022 to October 1, 2022 to accommodate the publishing scheduling of the State Register.

Additional non-substantive changes were made in 175.17(a)(4)(i), by italicizing the "(a)", "(b)" & "(c)" to conform the text to regulatory numbering protocol and avoid confusion.

Initial Review of Rule

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

Assessment of Public Comment

The Department has received over 200 comments relating to this proposal. The majority of these comments were received from current license holders that opposed the regulation, however, for the reasons to follow, the Department finds such comments and general objections do not justify changes to the rulemaking.

The majority of the comments from current license holders consist of identical boilerplate concerns raising two general categories of objections: 1) that a cease and desist zones would harm "legitimate licensed real estate professionals while ineffectively allowing unlicensed actors to continue their business practices unfettered"; and 2) that the information gathered by the Department prior to adoption of the rule does not satisfy the "intense and repeated" standard required for the establishment of a cease and desist zone. The Department will address each category in turn.

With regard to the first category of comments suggesting that the rule will harm licensees while benefiting "unlicensed actors", the Department notes that the commenters have not provided any facts to support the concerns presented. In addition, with regard to the feared harm to licensees, the Department notes that these comments contradict some of the testimony provided by other licensees. For example, during the public hearings, several brokers indicated that they would voluntarily stop sending solicitations to owners that contacted them, supporting the Department's position, which is based on its experience with prior cease and desist zones, that such zones have not impeded real estate professionals from operating successfully within such areas. Additionally, with regard to concerns that "unlicensed actors" will benefit from the establishment of such zones, the Department notes that the rule applies equally to both unlicensed businesses and persons that are regularly engaged in the business of buying or selling property. Accordingly, the Department finds that these comments are unsupported and do not warrant amendments to the rule.

The second main category of objections was stated by many commenters as follows: the "standard of 'intense and repeated solicitation' has not been met by the extremely limited sample of documents and anecdotal testimony provided during the abovementioned public hearings. Additionally, we believe conditions of illegal housing discrimination, such as red lining or block busting must also exist in order to impose such cease and desist zones. These concerns were not raised at such hearings." In brief, the Department finds that these comments are not well-founded and do not support modification of the rule. First, these comments do not take into account the additional materials collected and received by the Department beyond what was offered at the public hearings. Moreover, after thorough and careful consideration of all of the data and other information gathered, including materials offered outside of the public hearings, the Department does believe that there is sufficient support for its conclusion that there has been "intense and repeated solicitation" within the proposed zones. Finally, the Department notes that the remaining comments - concerning the appropriate legal standard required for the establishment of cease and desist zones - were previously addressed in Anderson v. Treadwell, 294 F.3d 453 (2d Cir. 2002) and are misguided.

Additional comments were received from several homeowners and local civic associations representing areas not included within the proposal. These commenters generally favored the creation of "cease and desist zones" citing, inter alia, the intense and repeated solicitations they have suffered, but requested that the boundaries of the proposed areas be enlarged to include their communities. The Department is concerned about the conditions these homeowners are facing; however, there is insufficient data at this time to suggest these specific communities, as a whole, are subject to intense and repeated solicitation. Because there is insufficient data to support increasing the boundaries of the proposed zones, the Department finds that it cannot amend the rule to accommodate these comments.

Department of Taxation and Finance

NOTICE OF ADOPTION

City of New York Withholding Tables and Other Methods

I.D. No. TAF-27-17-00004-A
Filing No. 765
Filing Date: 2017-09-11
Effective Date: 2017-09-27

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

Action taken: Repeal of Appendix 10-C; and addition of new Appendix 10-C to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 671(a)(1), 697(a), 1309, 1312(a); Administrative Code of the City of New York, sections 11-1771(a), 11-1797(a); and L. 2017, ch. 59, part C

Subject: City of New York withholding tables and other methods.

Purpose: To provide current City of New York withholding tables and other methods.

Text or summary was published in the July 5, 2017 issue of the Register, I.D. No. TAF-27-17-00004-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Department of Taxation and Finance, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: Kathleen.OConnell@tax.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Public Assistance (PA) Budgetary Method

I.D. No. TDA-39-17-00005-P

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

Proposed Action: Amendment of section 352.29(h)(2)(v)(*b*) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 17(a)-(b), (j), 20(3)(d), 34(3)(f), 131(1) and 131-n(1)

Subject: Public Assistance (PA) budgetary method.

Purpose: To update State regulations governing treatment of income in excess of standard of need in PA households, consistent with SSL section 131-n(1).

Text of proposed rule:

Clause (b) of subparagraph (v) of paragraph (2) of subdivision (h) of § 352.29 of Title 18 NYCRR is amended to read as follows:

(*b*) to open a separate bank account or bank accounts that are exempt from the public assistance resource limit under section 352.23(b) of this Part for the purpose of purchasing an automobile to seek or retain employment or for the purpose of paying tuition at a [two year] *two-year or four-year accredited* post-secondary educational institution; or

Text of proposed rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16-C, Albany, NY 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority:

Social Services Law (SSL) § 17(a)-(b) and (j) provides, in part, that the Commissioner of the Office of Temporary and Disability Assistance (OTDA) shall "determine the policies and principles upon which public assistance, services and care shall be provided within the [S]tate both by the [S]tate itself and by the local governmental units ….", shall "make known his policies and principles to local social services officials and to public and private institutions and welfare agencies subject to his regulatory and advisory powers …", and shall "exercise such other powers and perform such other duties as may be imposed by law." SSL § 20(3)(d) authorizes OTDA to promulgate regulations to carry out its powers and duties. SSL § 34(3)(f) requires the Commissioner of OTDA to establish regulations for the administration of public assistance and care within the State. SSL § 131(1) requires social services districts (SSDs), insofar as funds are available, to provide adequately for those unable to maintain themselves, in accordance with the provisions of the SSL. SSL § 131-n(1) provides a resources exemption of up to $1,400 for funds in a separate bank account established by a recipient of public assistance (PA) for the sole purpose of paying tuition at two-year or four-year accredited post-secondary educational institutions, so long as the funds are not used for any other purpose.

2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations, and policies so that adequate provision is made for those persons unable to provide for themselves, so that, whenever possible, such persons can be restored to conditions of self-support and self-care.

3. Needs and Benefits:

The proposed regulatory amendment of 18 NYCRR § 352.29(h)(2)(v)(b) would implement the provision of SSL § 131-n(1) in the State regulations, and allow PA recipients to exempt up to $1,400 in a separate bank account for the sole purpose of paying tuition at two-year or four-year accredited post-secondary educational institutions. Under the previous exemption, recipients of PA were allowed to exempt up to $1,400 in a separate bank account for the sole purpose of paying tuition at a two-year accredited post-secondary educational institution. By allowing PA recipients to utilize the exempt resources amount for either a two-year or a four-year accredited educational institution, the proposed regulatory amendment would offer PA recipients enhanced educational options to advance their workforce readiness and financial earning capabilities through the pursuit of higher education. The proposed regulatory amendment is required to render State regulations consistent with statutory requirements and to reflect current practices.

4. Costs:

There would be no new costs associated with the proposed regulatory amendment, insofar as the proposed regulatory amendment would reflect current statutory requirements which have already been implemented by the OTDA and the SSDs.

5. Local Government Mandates:

The proposed regulatory amendment would reflect current practices, and would not require any new resources, procedures, or expertise to implement.

6. Paperwork:

There would be no additional reporting requirements or additional paperwork required to support the proposed regulatory amendment.

7. Duplication:

The proposed regulatory amendment would not duplicate, overlap or conflict with any existing State or federal regulations.

8. Alternatives:

An alternative is to leave the current 18 NYCRR § 352.29(h)(2)(v)(b) intact. However, under this alternative, the existing State regulation would remain inconsistent with SSL § 131-n(1). Adoption of the proposed regulatory amendment is necessary in order to render the existing State regulations consistent with statutory requirements and current practices.

9. Federal Standards:

The proposed regulatory amendment would not conflict with federal standards for use of resources.

10. Compliance Schedule:

There is no need to establish a compliance schedule relative to the proposed regulatory amendment because the proposed regulatory amendment would reflect current statutory requirements set forth in SSL § 131-n(1), which have already been implemented by OTDA and the SSDs.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required because the proposed regulatory amendment would neither have an adverse impact upon, nor impose reporting, recordkeeping, or other compliance requirements upon small businesses or local governments. The proposed regulatory amendment would allow public assistance (PA) recipients to exempt up to $1,400 in a separate bank account for the sole purpose of paying tuition at two-year or four-year accredited post-secondary educational institutions. The proposed regulatory amendment is clarifying in nature, and would update State regulations governing treatment of income in excess of standard of need in PA households, consistent with Social Services Law § 131-n(1), and has already been implemented by the Office of Temporary and Disability Assistance and the social services districts. As it was evident that the proposed regulatory amendment would not have an adverse impact upon small businesses or local governments or impose reporting, recordkeeping, or other compliance requirements upon them, no further measures were needed to ascertain those facts, and, consequently, none were taken.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not required because the proposed regulatory amendment would neither have an adverse impact upon, nor impose reporting, recordkeeping, or other compliance requirements upon public or private entities in rural areas. The proposed regulatory amendment would allow public assistance (PA) recipients to exempt up to $1,400 in a separate bank account for the sole purpose of paying tuition at two-year or four-year accredited post-secondary educational institutions. The proposed regulatory amendment is clarifying in nature, and would update State regulations governing treatment of income in excess of standard of need in PA households, consistent with Social Services Law § 131-n(1), and has already been implemented by the Office of Temporary and Disability Assistance and the social services districts. As it was evident that the proposed regulatory amendment would not have an adverse impact upon or impose reporting, recordkeeping, or other compliance requirements upon public or private entities in rural areas, no further measures were needed to ascertain those facts, and, consequently, none were taken.

Job Impact Statement

A Job Impact Statement is not required for the proposed regulatory amendment. It is apparent from the nature and the purpose of the proposed regulatory amendment that it would not have a substantial adverse impact on jobs and employment opportunities in the private sector, in the social services districts (SSDs), or in the State. The proposed regulatory amendment would not substantively affect the jobs of the employees of the SSDs or the State. The proposed regulatory amendment would allow public assistance (PA) recipients to exempt up to $1,400 in a separate bank account for the sole purpose of paying tuition at two-year or four-year accredited post-secondary educational institutions. The proposed regulatory amendment is clarifying in nature, and would update State regulations governing treatment of income in excess of standard of need in PA households, consistent with SSL § 131-n(1), and has already been implemented by the Office of Temporary and Disability Assistance and the SSDs. Thus, the proposed regulatory amendment would not adversely impact upon jobs and employment opportunities in New York State.

Department of Transportation

NOTICE OF ADOPTION

Railroad Bridge Inventory and Inspection

I.D. No. TRN-24-17-00001-A

Filing No. 766

Filing Date: 2017-09-12

Effective Date: 2017-09-27

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

Action taken: Repeal of Part 913; and addition of new Part 913 to Title 17 NYCRR.

Statutory authority: Transportation Law, subdivision 14(18); Highway Law, subdivision 236(4)

Subject: Railroad Bridge Inventory and Inspection.

Purpose: Render state railroad bridge inspection and inventory regulations consistent with Title 49 CFR Part 237.

Text or summary was published in the June 14, 2017 issue of the Register, I.D. No. TRN-24-17-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Alan Black, Legal Assistant 2, NYSDOT, Office of Legal Services, 50 Wolf Road, 6th floor, Albany, NY 12232, (518) 485-9953, email: alan.black@dot.ny.gov

Revised Job Impact Statement

It is determined that this rulemaking will have no impact on jobs and employment opportunities.

Assessment of Public Comment

The agency received no public comment.