RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Host Materials (Potatoes, Tomatoes and Eggplants) and Soil

I.D. No. AAM-05-18-00003-A
Filing No. 373
Filing Date: 2018-04-11
Effective Date: 2018-04-25

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

Action taken: Repeal of section 127.2; and addition of new section 127.2 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Host materials (potatoes, tomatoes and eggplants) and soil.

Purpose: To lift the golden nematode (GN) quarantine in portions of Cayuga, Seneca, Steuben, Suffolk, and Wayne Counties.

Text or summary was published in the January 31, 2018 issue of the Register, I.D. No. AAM-05-18-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Christopher Logue, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087, email: christopher.logue@agriculture.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 2021, 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.

Education Department

EMERGENCY RULE MAKING

Graduate Admission Examination Requirements

I.D. No. EDU-06-18-00009-E
Filing No. 366
Filing Date: 2018-04-10
Effective Date: 2018-04-24

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

Action taken: Amendment of section 52.21 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207 and 210-a

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

Specific reasons underlying the finding of necessity: Chapter 56 of the Laws of 2015 added Section 210-a to the Education Law to require all institutions with graduate-level teacher and educational leadership programs registered by the Department to "adopt rigorous selection criteria geared to predicting a candidate's success in its program." One of these criteria includes achieving a minimum score on the Graduate Record Examination (GRE) or a substantially equivalent admission examination. Section 52.21 of the Commissioner's Regulations was amended to implement this new law.

On December 13, 2017, the Governor signed a bill amending § 210-a of the Education Law. The amendment removes the graduate admission examination requirement for those certified teachers and school administrators who already hold a graduate degree. In order to implement the change in law, the proposed regulation amendment clarifies that the graduate admission examination requirement does not apply to those certified teachers and school building leaders who already hold a graduate degree. 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 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) Sections 202(1) and (5), is the May 2018 Regents meeting. Furthermore, pursuant to SAPA Section 203(1), the earliest effective date of the proposed amendment, if adopted at the May Regents meeting, is May 23, 2018, the date a Notice of Adoption would be published in the State Register. However, because the change in law has an immediate effective date, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to ensure that the proposed amendment is effective immediately in order to timely implement the amended law.

In addition, the proposed amendment was adopted at the January 2018 Regents meeting and became effective as an emergency measure on January 23, 2018. The emergency will expire on April 23, 2018. Therefore, a second emergency action is needed to ensure that the rule remains continuously in effect until it can be adopted as a permanent rule at the May 2018 Regents meeting.

Subject: Graduate Admission Examination Requirements.

Purpose: To adopt rigorous selection criteria geared to predicting a candidate's academic success in its program.

Text of emergency rule: Subclause (1) of clause (l) of subparagraph (i) of paragraph (2) of subsection (b) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(1) Institutions with registered graduate level teacher and educational leadership programs shall adopt rigorous selection criteria geared to predicting a candidate's academic success in its program. These rigorous selection criteria shall include, but not be limited to, a minimum score on the graduate record examination or a substantially equivalent admission examination, as determined by the institution, and achievement of a cumulative grade point average of 3.0, or its equivalent, in the candidate's undergraduate program*; provided, however, that such graduate record examination or substantially equivalent admission examination requirement shall in no case apply to currently certified teachers or educational leaders who already hold a graduate degree*.

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-06-18-00009-EP, Issue of February 7, 2018. The emergency rule will expire June 8, 2018.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Education Law § 210-a establishes minimum selection criteria for graduate teacher and educational leadership programs registered by the Department.

Chapter 454 of the Laws of 2017 amends § 210-a of the Education Law relating to minimum selection criteria for graduate teacher and educational leadership programs.

2. LEGISLATIVE OBJECTIVES:

The purpose of the proposed emergency amendment to Section 52.21 of the Regulations of the Commissioner of Education is to implement Chapter 454 of the Laws of 2017 which removed the requirement for certified teachers and school administrators who already hold a graduate degree to take either the GRE or a substantially equivalent admission examination to meet the minimum selection criteria for graduate teacher or educational leadership programs.

3. NEEDS AND BENEFITS:

Chapter 56 of the Laws of 2015 added § 210-a to the New York State Education Law to require all institutions with graduate-level teacher and educational leadership programs registered by the Department to "adopt rigorous selection criteria geared to predicting a candidate's academic success in its program." One of these criteria includes achieving a minimum score on the Graduate Record Examination (GRE) or a substantially equivalent admission examination. Subsequently, the Department amended Section 52.21 of the Regulations of the Commissioner of Education to implement the new law.

On December 13, 2017, the Governor signed Chapter 454 of the Laws of 2017 amending § 210-a of the Education Law to remove the requirement for certified teachers and school administrators who already hold a graduate degree to take either the GRE or a substantially equivalent admission examination to meet the minimum selection criteria for graduate teacher or educational leadership programs.

Proposed Amendment

In order to implement the change in law, which has an immediate effective date, the proposed regulation amendment to Section 52.21 of the Commissioner's Regulations makes it clear that the graduate admission examination requirement does not apply to certified teachers and school administrators who already hold a graduate degree.

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, it only implements Chapter 454 of the Laws of New York which amended § 210-a of the Education Law.

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

If adopted as an emergency measure at the January meeting, the proposed amendment will become effective on January 23, 2018. It is anticipated that the proposed amendment will be adopted as a permanent rule by the Board of Regents at its May 2018 meeting. If adopted at the May 2018 meeting, the proposed amendment will become effective on May 23, 2018.

Regulatory Flexibility Analysis

The purpose of the proposed emergency amendment to Section 52.21 of the Regulations of the Commissioner of Education is to implement Chapter 454 of the Laws of 2017 which removed the requirement for certified teachers and school administrators who already hold a graduate degree to take either the GRE or a substantially equivalent admission examination to meet the minimum selection criteria for graduate teacher or educational leadership programs.

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 institutions of higher education in New York State with graduate-level teacher and educational leadership programs registered by the Department, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Chapter 56 of the Laws of 2015 added § 210-a to the New York State Education Law to require all institutions with graduate-level teacher and educational leadership programs registered by the Department to "adopt rigorous selection criteria geared to predicting a candidate's academic success in its program." One of these criteria includes achieving a minimum score on the Graduate Record Examination (GRE) or a substantially equivalent admission examination. Subsequently, the Department amended Section 52.21 of the Regulations of the Commissioner of Education to implement the new law.

On December 13, 2017, the Governor signed Chapter 454 of the Laws of 2017 amending § 210-a of the Education Law to remove the requirement for certified teachers and school administrators who already hold a graduate degree to take either the GRE or a substantially equivalent admission examination to meet the minimum selection criteria for graduate teacher or educational leadership programs.

Proposed Amendment

In order to implement the change in law, which has an immediate effective date, the proposed regulation amendment to Section 52.21 of the Commissioner's Regulations makes it clear that the graduate admission examination requirement does not apply to certified teachers and school administrators who already hold a graduate degree.

3. COSTS:

The proposed amendment does not impose any costs on institutions of higher education or those applying to graduate-level teacher and educational leadership programs offered by the institutions.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendments create no adverse impact.

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 52.21 of the Regulations of the Commissioner of Education is to implement Chapter 454 of the Laws of 2017 which removed the requirement for certified teachers and school administrators who already hold a graduate degree to take either the GRE or a substantially equivalent admission examination to meet the minimum selection criteria for graduate teacher or educational leadership programs.

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

they will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken.

NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

Superintendent Determination for Certain Students with Disabilities to Graduate with a Local Diploma

I.D. No. EDU-52-17-00012-ERP
Filing No. 367
Filing Date: 2018-04-10
Effective Date: 2018-04-25

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 200.4 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), 3204(3) and (4)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Regents policy to permit students with disabilities to meet the Regents English language arts (ELA) and/or mathematics examinations eligibility conditions for the superintendent determination option by completing the requirements for the New York State Career Development and Occupational Studies (CDOS) Commencement Credential. In addition, the proposed rule would allow, for students with disabilities who are otherwise eligible to exit from high school in either the 2017-18 school year or 2018-19 school year only, a school district, registered nonpublic high school and charter school to award the CDOS Commencement Credential to a student with a disability who has not met all of the requirements, for purposes of eligibility for the superintendent determination option, provided that the school principal, in consultation with relevant faculty, has determined that the student has otherwise demonstrated knowledge and skills in the commencement level CDOS learning standards. Students who are awarded the CDOS commencement credential under this exception may not use such credential to meet the requirements for the career development and occupational studies graduation pathway option.

The proposed amendment was readopted as a second emergency measure, effective March 11, 2018, to ensure that the emergency rule adopted at the December 2017 Board of Regents meeting remained continuously in effect until it could be adopted as a permanent rule.

The proposed amendment has now been revised in response to public comment. For instance, Sections 100.5(d)(12) and 200.4(d)(2)(ix)(b)(3) of the Commissioner's Regulations have been amended to replace the term "superintendent determination pathway" with "superintendent determination option" to clarify that the superintendent determination is an option, not a pathway, for student with disabilities to graduate with a local diploma. Section 100.5(d)(12)(ii)(d) has also been revised to clarify that students who use the CDOS Commencement Credential to meet the ELA and/or mathematics Regents examinations eligibility conditions for the Superintendent Determination option but have met all the assessment requirements for the remaining Regents examinations required for graduation, would be eligible for consideration of a local diploma through the Superintendent Determination option.

It is anticipated that the revised rule will be presented for adoption as a permanent rule at the July 2018 Board of Regents meeting, which is the first scheduled meeting after expiration of the 30-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings. A third emergency adoption, effective April 25, 2018 is necessary to adopt the revisions made in response to public comment and to otherwise ensure that the rule remains continuously in effect until the rule can be adopted as a permanent rule and to ensure that certain students with disabilities who are otherwise eligible to graduate from high school in January 2018 and thereafter are aware that they may be considered an eligible student for the superintendent determination option if they meet the requirements of the proposed rule. It is also necessary to ensure that superintendents are on notice that they must make a determination as to whether certain students with disabilities are eligible for a local diploma, if the student meets the requirements of the proposed rule.

Subject: Superintendent determination for certain students with disabilities to graduate with a local diploma.

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

Text of emergency/revised rule: 1. The emergency action taken at the February 2018 Board of Regents meeting to amend paragraph (12) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education, is rescinded, effective April 24, 2018.

2. Paragraph (12) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective April 25, 2018, as follows:

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

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

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

(a) has a current individualized education program and is receiving special education programs and/or related services pursuant to Education Law section 4402 and section 200.4 of this Title;

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

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

(d) participated in the remaining Regents examinations required for graduation pursuant to clauses (c), (d), (e) and (f) of subparagraph (a)(5)(i) of this section, but was unable to achieve a minimum score of 55 on one or more of the remaining assessments required for graduation or did not initiate an appeal of a score of between 52 and 54 on one or more such examinations pursuant to paragraph (7) of this subdivision, or was unable to use the compensatory score option for one or more such examinations pursuant to clause (7)(vi)(c) of this subdivision; *provided that nothing in this clause shall prohibit a student who uses the New York State career development and occupational studies commencement credential to meet requirements of clauses (b) and/or (c) of this subparagraph from requesting a review by the superintendent to determine whether the student has otherwise demonstrated proficiency in the knowledge, skills and abilities only for the subject area(s) of English language arts and/or mathematics;* and

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

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

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

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

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

(d) the superintendent shall, as soon as practicable, provide each

student and parent or person in parental relation to the student with a copy of the completed form and written notification of the superintendent's determination, and place a copy of the completed form in the student's record.

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

(2) Where the superintendent determines that the student has met the requirements for graduation pursuant to this paragraph, the parent shall receive prior written notice pursuant to the requirements of section 200.5(a)(5)(ii) of this Title indicating that the student is not eligible to receive a free appropriate public education after graduation with the receipt of the local diploma pursuant to this paragraph; and

(e) the superintendent shall, no later than August 31 of each year, provide the commissioner with a copy of the completed form for each student; and

(f) the commissioner may conduct audits of compliance with the requirements of this paragraph.

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

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

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

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

3. Subclause (3) of clause (b) of subparagraph (ix) of paragraph (2) of subdivision (d) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective April 25, 2018, as follows:

(3) the appeal, safety net and superintendent determination [pathway] *options* that may be available to the student through section 100.5 of this Title to allow the student to meet the graduation assessment requirements.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on December 27, 2017, I.D. No. EDU-52-17-00012-EP. The emergency rule will expire June 8, 2018.

Emergency rule compared with proposed rule: Substantial revisions were made in sections 100.5(d)(12) and 200.4(d)(2).

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

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

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

Revised Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

All students with disabilities must be held to high expectations and be provided meaningful opportunities to participate and progress in the general education curriculum to prepare them to graduate with a regular high school diploma. The majority of students with disabilities can meet the State's learning standards for graduation. However, there are some students who, because of their disabilities, are unable to demonstrate their proficiency on standard State assessments, even with testing accommodations. For these students, the State provided a superintendent determination option for eligible students to graduate with a local diploma, beginning in June 2016 and thereafter.

Under current regulations, to be eligible for the superintendent determination option to graduate with a local diploma, a student with a disability must meet all conditions as follows:

- The parent/guardian submitted a written request that their child be considered for a superintendent determination;
- The student has a current individualized education program and is receiving special education programs and/or related services;
- The student did not meet the graduation requirements through the low pass (55-64) safety net option or the compensatory safety net option;
- The student has earned the required course credits and has passed, in accordance with district policy, all courses required for graduation, including the Regents courses to prepare for the corresponding required Regents examination areas (English language arts (ELA), mathematics, social studies, and science);
- The student has earned a minimum score of 55 on both the ELA and mathematics Regents examinations or a successful appeal of a score between 52 and 54;
- The student has participated in other Regents examinations, but has not passed one or more of these examinations as required for graduation; and
- The student has otherwise demonstrated competency in the subject area where the student was not able to demonstrate his/her proficiency of the State's learning standards through the Regents examination.

Summary of Amendments Adopted in December 2017 and February 2018

The proposed amendment allowed students with disabilities, otherwise eligible to graduate beginning January 2018 and thereafter, who have not earned a minimum score of 55 on the ELA and/or mathematics Regents examinations or did not initiate an appeal of a score between 52 and 54 to meet the ELA and/or mathematics Regents examinations eligibility conditions for the superintendent determination option by completing the requirements for the New York State Career Development and Occupational Studies (CDOS) Commencement Credential. For these students, the superintendent must conduct a review to determine whether such student has otherwise demonstrated proficiency in the knowledge, skills and abilities in ELA and/or mathematics, in addition to any other subject areas where the student was not able to demonstrate his/her proficiency of the State's learning standards as measured by the corresponding Regents examination(s) required for graduation.

In addition, because some students may not have had the opportunity to work towards earning the CDOS Commencement Credential and would be unable to use the credential to meet the ELA and mathematics Regents examinations eligibility conditions for the superintendent determination option, the proposed rule includes an exception to certain requirements to allow appropriate discretion to school principals to determine whether students have otherwise demonstrated the knowledge and skills related to the CDOS learning standards sufficient for entry-level employment. Specifically, for students with disabilities who are otherwise eligible to graduate during the 2017-18 and 2018-19 school years, the exception would allow school districts, registered nonpublic high schools and charter schools to award the CDOS Commencement Credential to a student with a disability who has not fully met all of the requirements, for purposes of eligibility for the superintendent determination option, provided that the school principal, in consultation with relevant faculty, has determined that the student has otherwise demonstrated knowledge and skills in the commencement level CDOS learning standards 1, 2 and 3a. The principal must have evidence that the student has successfully completed relevant instructional and work-based learning activities during the student's secondary school years that demonstrates the student has readiness skills for entry-level employment. However, for students who are otherwise eligible to graduate during the 2017-18 and 2018-19 school years, the total hours of the career and technical education coursework and/or work-based learning activities may be less than the required equivalent of two units of study (216 hours).

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

Revisions to proposed amendment as a result of public comment

Since publication of the proposed amendment in the State Register on December 27, 2017, the following substantial revisions have been made to address public comment and to clarify the proposed rule:

• Sections 100.5(d)(12) and 200.4(d)(2)(ix)(b)(3) of the Commissioner's Regulations have been amended to replace the term "superintendent determination pathway" with "superintendent determination option" to clarify that the superintendent determination is an option, not a pathway, for students with disabilities to graduate with a local diploma.

• Section 100.5(d)(12)(ii)(d) has been revised to clarify that students with disabilities who use the CDOS Commencement Credential to meet the ELA and/or mathematics Regents examinations eligibility conditions for the Superintendent Determination option, but have met all the assessment requirements for the remaining Regents examinations required for graduation, would be eligible for consideration of a local diploma through the superintendent determination option.

4. COSTS:

(a) Costs to State: none.

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

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

In addition, there may be costs associated with extending the population of students with disabilities who are awarded a CDOS Commencement Credential. These costs are anticipated to be minimal and capable of being absorbed by districts using existing staff and resources.

(c) Costs to private regulated parties: See (b) above.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment would require, on or after December 12, 2017 (the effective date of the first emergency adoption of the rule), districts to conduct a superintendent determination review for students with disabilities who met the eligibility conditions for the superintendent determination option by completing the requirements for the CDOS Commencement Credential. It would also allow for students with disabilities who are otherwise eligible to graduate during the 2017-18 and 2018-19 school years, school districts, and nonpublic high schools and charter schools to award the CDOS Commencement Credential to a student with a disability who has not fully met all of the CDOS requirements, for purposes of eligibility for the superintendent determination option, provided that the school principal, in consultation with relevant faculty, has determined that the student has otherwise demonstrated knowledge and skills in the commencement level CDOS learning standards 1, 2 and 3a.

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

There are no related federal standards in this area.

10. COMPLIANCE SCHEDULE:

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

Revised Regulatory Flexibility Analysis

(a) Small businesses:

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

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 governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

The proposed rule would, on or after December 12, 2017 (the effective date of the first emergency action), allow students with disabilities who have not earned a minimum score of 55 on the ELA and/or mathematics Regents examinations or did not initiate an appeal of a score between 52 and 54 to meet the ELA and/or mathematics Regents examinations eligibility conditions for the superintendent determination option by completing the requirements for the CDOS Commencement Credential. For these students, the superintendent must conduct a review to determine whether such student has otherwise demonstrated proficiency in the knowledge, skills and abilities in ELA and/or mathematics, in addition to any other subject areas where the student was not able to demonstrate his/her proficiency of the State's learning standards as measured by the corresponding Regents examination(s) required for graduation.

In addition, because some students may not have had the opportunity to work towards earning the CDOS Commencement Credential and would

therefore be unable to use the credential to meet the threshold eligibility conditions for the superintendent determination option, the proposed rule includes an exception to certain requirements to allow appropriate discretion to school principals to determine whether students have otherwise demonstrated the knowledge and skills related to the CDOS learning standards sufficient for entry-level employment. Specifically, for students with disabilities who are otherwise eligible to graduate during the 2017-18 and 2018-19 school years only, the exception would allow school districts, and nonpublic high schools and charter schools to award the CDOS Commencement Credential to a student with a disability who has not fully met all of the requirements, for purposes of eligibility for the superintendent determination option, provided that the school principal, in consultation with relevant faculty, has determined that the student has otherwise demonstrated knowledge and skills in the commencement level CDOS learning standards 1, 2 and 3a. The principal must have evidence that the student has successfully completed relevant instructional and work-based learning activities during the student's secondary school years that demonstrates the student has readiness skills for entry-level employment. However, for students who are otherwise eligible to graduate during the 2017-18 and 2018-19 school years, the total hours of the career and technical education coursework and/or work-based learning activities may be less than the required equivalent of two units of study (216 hours).

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

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

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

However, in the long term, the proposed amendment is expected to be a cost-saving measure in that it will boost the graduation rate, allowing more students to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities. In addition, there may be costs associated with extending the population of students with disabilities who are awarded a CDOS Commencement Credential. These costs are anticipated to be minimal and capable of being absorbed by districts using existing staff and resources.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

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

7. LOCAL GOVERNMENT PARTICIPATION:

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

Revised Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to each of the 689 public school districts in the State, charter schools, and registered nonpublic schools in the State, to the extent that they offer instruction in the high school grades, 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. At present, there is one charter school located in a rural area that is authorized to issue diplomas.

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

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

3. COMPLIANCE COSTS:

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

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

In addition, there may be costs associated with extending the population of students with disabilities who are awarded a CDOS Commencement Credential. These costs are anticipated to be minimal and capable of being absorbed by districts using existing staff and resources.

4. MINIMIZING ADVERSE IMPACT:

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

Because the Regents policy upon which the proposed amendment is based applies to all school districts in the State and to charter schools and registered nonpublic high schools, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

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

Revised Job Impact Statement

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

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

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on December 27, 2017, the State Education Department (SED) received the following comments on the proposed amendment.

1. COMMENT:

Support permitting students unable to score 55 on English language arts (ELA) and math Regents examinations ("Regents") (52-54 with appeal) to seek Superintendent Determination (SD) by earning Career Development and Occupational Studies (CDOS) Commencement Credential ("Credential"). Support awarding diploma for achievement, vocational training, and alternative pathways. Pleased Board of Regents (BOR)

continues exploring nonexamination-based diploma pathways. Safety net essential; unconscionable to deny diploma due to testing requirements. Proposal recognizes parents' concerns; restores local diploma for students who cannot achieve low-pass scores on ELA and math; allows students to demonstrate capabilities, be acknowledged for efforts, engage in post-school activities, and recognizes high school completion; broadens opportunities; removes Regents as graduation barrier for students struggling with tests; expands graduation pathways while maintaining high standards; provides meaningful diploma; levels playing field; provides balanced approach of skill attainment; allows students to realize potential and become independent, successful adults.

DEPARTMENT RESPONSE:

Comments supportive; no response necessary.

2. COMMENT:

Reconsider decision. Proposal lowers bar; reduces graduation/ Credential requirements; leaves much to principal interpretation; diminishes diploma value; will not improve academic performance or prepare students for post-school success; dilutes standards; does not allow demonstration of knowledge or provide students access to same curriculum/ opportunities as nondisabled peers; provides no accountability; is statistical move to improve graduation rate; undercuts opportunities for income, independence and success; does not go far enough; allows students to fall through cracks. Diploma may be seen as inferior/less rigorous. Concerned about lower standards impact on minority students and long-term effects/ benefits of proposal. Sends message to students they are incapable and to take easy way out; will not work to full potential if safety net available. Results in same skill levels as under individualized education program (IEP) diploma. May impact Social Security Supplemental insurance (SSI) benefits if disability prevents competitive employment. Students want to be treated like everyone else. Give students tools for success. Show connection between diploma and job skills.

DEPARTMENT RESPONSE:

Requirements to earn a diploma remain rigorous. Students must demonstrate proficiency of standards in subject areas where they did not meet graduation assessment requirements, and in CDOS-standards sufficient for entry-level employment. Students must continue to have meaningful access to general education curriculum and meet all other SD eligibility requirements (See http://www.regents.nysed.gov/ common/regents/files/ 1016p12a1.pdf). SSI eligibility is beyond scope of rule.

3. COMMENT:

Ensure students held to high standards and not pushed out of school. Require parent sign-off versus superintendent deciding modified degree. Is parent/guardian request still needed?

DEPARTMENT RESPONSE:

Students may only be considered for SD upon written parent/guardian request.

4. COMMENT:

Educate parents in native language; develop materials explaining graduation pathways versus credentials, options available to alternate assessment students, what diploma options mean for post-secondary opportunities and parents' rights. Teachers should know graduation options.

DEPARTMENT RESPONSE:

Districts are responsible for providing parents written information; explaining applicable graduation requirements at CSE meetings for transition-age students; and ensuring parents understand discussions and their rights and teachers know current graduation requirements. See http:// www.p12.nysed.gov/ specialed/gradrequirements/home.html for information on graduation requirements/credentials

5. COMMENT:

Which cohorts are eligible to use proposal relating to SD eligibility conditions?

DEPARTMENT RESPONSE:

Rule applies to students eligible to graduate in January 2018 and thereafter.

6. COMMENT:

Clarify reenrollment process for students under 21, including those who completed exams/earned required credits. Expand to students over 21 who exited with Credential and met current criteria upon exiting, with conferral retroactive to exit date; or establish process to grant high school equivalency (HSE) certificates.

DEPARTMENT RESPONSE:

Students with disabilities may reenroll up to and including the end of the school year in which they turn 21 and be considered for SD provided they have current IEP, are receiving special education programs/services, and are participating in coursework when SD is made. Law prohibits adopting regulations that impose retroactive policy. The HSE is an available option for individuals who are not covered by this regulation.

7. COMMENT:

Confirm proposal allows five Regents scores below 52.

DEPARTMENT RESPONSE:

Students may use SD on up to five subject areas where they did not pass required Regents provided they are using the CDOS Credential to meet math and ELA eligibility conditions.

8. COMMENT:

Clarify if CDOS Credential:

- can be used for both ELA and math eligibility conditions and CDOS pathway;
- earned through Option 1/2 can be used for SD eligibility;
- waiver still exists for transfer students.

DEPARTMENT RESPONSE:

CDOS Credential can be used for both ELA and Math eligibility conditions and CDOS pathway;provided that students awarded the CDOS Credential under two-year exception period (2017-18/2018-19 school-years)for SD eligibility cannot use such Credential for the CDOS pathway.

Credential earned through Option 1/2 can be used to meet ELA and/or math eligibility conditions.

No changes were made to provision allowing principals to evaluate transfer students' transcripts to award CDOS Credential.

9. COMMENT:

Revise § 100.5(d)(12)(i) to clarify principal can make SD.

DEPARTMENT RESPONSE:

Semicolon has been added to § 100.5(d)(12)(i) to clarify only superintendents of public schools (or principals of registered nonpublic or charter schools) may conduct SD.

10. COMMENT:

Regulations require that students participated in other required Regents but did not pass one or more for SD eligibility. Are students who pass all Regents except ELA and/or math disqualified from SD option?

DEPARTMENT RESPONSE:

Rule has been revised to clarify students who use CDOS Credential to meet ELA and/or math eligibility condition(s) but meet remaining assessment requirements are eligible for SD.

11. COMMENT:

Can credit deficient students use SD? Must students sit for Regents to be eligible?

DEPARTMENT RESPONSE:

To be considered for SD, students must have earned credits required under § 100.5 and actively participated in Regents in subject area(s) under review.

12. COMMENT:

Clarify SD is option versus pathway to graduation to be used only after all other special education services/supports/accommodations and safety nets are exhausted.

DEPARTMENT RESPONSE:

Rule revised to replace "pathway" with "option."

13. COMMENT:

Confirm CDOS Credential is not diploma and students exiting with only CDOS Credential are not graduates. How are these students included in graduation data?

DEPARTMENT RESPONSE:

CDOS Credential is not diploma and such students are considered completers. Students earning local diploma through SD are graduates.

14. COMMENT:

Is there a cap on students receiving local diploma through SD?

DEPARTMENT RESPONSE:

No cap; however, SD should only be used when students do not meet assessment requirements through existing appeal/safety net options.

15. COMMENT:

Does rule apply to students with Section 504 plans?

DEPARTMENT RESPONSE:

SD does not apply to students with 504 plans.

16. COMMENT:

Question emergency measure; problem existed for years. No time to communicate and systematize policy.

DEPARTMENT RESPONSE:

Emergency action was necessary to ensure eligible students and superintendents were aware that students who meet requirements must be considered for SD beginning January 2018.

17. COMMENT:

Provide guidance defining/supporting meaningful "consultation with relevant faculty." Clarify evidence needed under two-year exception to Credential requirements; and if 54 work-based-learning (WBL) hours are required and employment outside of school counts. Awarding Credential to students who did not do work does not demonstrate career-readiness; fails to represent students' capabilities; trivializes accomplishments of students completing requirements; and reduces likelihood of businesses hiring students.

DEPARTMENT RESPONSE:

Consultation necessary to determine that a student otherwise demonstrates knowledge and skills relating to CDOS-standards will depend on

the student. To award CDOS-Credential to students who have not met all requirements during two-year exception period, principals must have evidence that such students successfully completed relevant instructional and WBL activities that demonstrate readiness-skills for entry-level employment. Total hours of career and technical education (CTE) coursework and/or WBL may be less than 216. No minimum WBL hours are required. Independent employment outside of school cannot count toward WBL.

18. COMMENT:

CDOS Credential not recognized by adult-learning programs or businesses. Essential businesses partner with schools in developing training/work options. Credential inconsistently implemented; not available in all schools. Postpone implementation until 2019-2020; if not, students should be deemed eligible in limited circumstances where there is evidence schools offer free-standing courses/integrated learning opportunities in CDOS-standards and documentation student completed relevant instructional and WBL activities. Ensure principals know CDOS Credential requirements; provide guidance to ensure equitable/fair implementation.

DEPARTMENT RESPONSE:

SED met with businesses and other constituents in developing CDOS Credential policy framework/requirements. SED declines to delay implementation. CDOS Credential requirements were established beginning with 2013-14 school-year. Districts are responsible for preparing students with disabilities for post-secondary life by providing appropriate transition activities, including relevant coursework, instruction and services. Because some students may not have had opportunity to work towards CDOS Credential, rule allows principals appropriate discretion to determine whether students have sufficient knowledge of CDOS-standards to qualify for CDOS Credential during two-year exception. Students can also earn Credential by passing an SED approved work-readiness assessment. See: http://www.p12.nysed.gov/cte; http://www.p12.nysed.gov/ specialed/gradrequirements/home.html.

19. COMMENT:

Make SD available to all students. Limiting proposal to IEP students could create stigma; devalue credential/local diploma; force disability disclosure; track students away from rigorous coursework and limit number of times students allowed to attempt Regents; and create incentive to classify students. Pressures families to advocate for access to Regents-level courses. Identifying that Credential/diploma was granted through SD, will be stigmatizing when obtaining job or further education.

DEPARTMENT RESPONSE:

Proposal recognizes there are certain students with IEPs who, due to their disability, are unable to demonstrate proficiency on Regents. Disagree rule devalues diploma/CDOS Credential. Students using SD must still take and pass Regents-level coursework. It would be inappropriate to identify students for special education solely for purposes of SD eligibility. Diploma/CDOS credential should not indicate it was granted through SD.

20. COMMENT:

Can students over 18, or younger and emancipated, request SD?

DEPARTMENT RESPONSE:

Students may not request SD unless emancipated as NYS law does not transfer special education rights at age-of-majority.

21. COMMENT:

What evidence is sufficient to support students learned content? Revise § 100.5(d)(iii), (v)(b) from "demonstrated proficiency in the knowledge, skills and abilities" to "attainment of NYS standards" in subject area(s) under review. Credit accumulation unreliable measure of standards attainment; should not be exclusive means of determining proficiency. Require course grade minimally be average grade of student scoring 65 on Regents; schools issue guidance that grades reflect attainment of standards, not non-mastery measures; additional evidence standards attained (e.g. portfolio, project-based assessment) or use of Regents standard-setting Performance Level Descriptions. Local grades vary in rigor. Enforce classroom testing standards or eliminate Regents-format tests in courses for graduation.

DEPARTMENT RESPONSE:

Evidence to determine proficiency may include final course grades as well as work completed throughout year and/or interim grades on homework/projects/classwork/quizzes/tests. Such evidence must demonstrate students have met standards in subjects under review. Grading and testing standards/formats are matters of local policy and beyond scope of rule.

22. COMMENT:

Revise IEP form to identify diploma pathways discussed at CSE meeting.

DEPARTMENT RESPONSE:

Comment beyond scope of rule. Will be considered if changes are proposed to mandatory IEP form.

23. COMMENT:

NY one of few states requiring high-stake exams for diploma; review diploma system and assessment design. Appoint commission to reexamine graduation requirements. Safety net menu confusing and leads to disability-only pathways. Recommend simpler system that ensures students given opportunity to demonstrate mastery of standards. Too much emphasis on Regents. Consider alternate pathways for all students (e.g. technical diploma). Eliminate Common Core and Regents. Bring local diploma back for struggling students. Change Regents diploma passing score back to 55. Reinstitute Regents Competency Tests (RCTs) type exam with Credential for all students. Review diploma options/more credentials for alternately-assessed students. Consider absenteeism, suspensions, staff capacity to provide supports; and apprenticeships. Offer local diploma endorsements for Regents scores of 65 or higher to: provide incentive for attempting Regents; allow additional time to master learning; measure if achievement gap closing. Recommend CDOS programming be part of regular curriculum.

DEPARTMENT RESPONSE:

Comment beyond scope of rule. SED will consider these recommendations.

24. COMMENT:

Address at BOR meeting how many students projected to earn diploma using SD; how/when data will be released, including disaggregation; how implementation will be monitored to prevent misuse; how teacher supports/training will be increased to help meet Regents diploma requirements; how districts will ensure students are meeting ELA and math standards and are prepared for post-secondary education/training; and quality controls for evaluating students against CDOS-standards during two-year exception.

DEPARTMENT RESPONSE:

Comment beyond scope of rule. SED will review SD data.

25. COMMENT:

Can compensatory option be used for ELA and/or math Regents?

DEPARTMENT RESPONSE:

Compensatory option cannot be used for ELA or math scores between 45-54.

26. COMMENT:

Can homeschooled students earn local diploma?

DEPARTMENT RESPONSE:

Comment beyond scope of rule (See 8 NYCRR § 100.10 "Home Instruction").

27. COMMENT:

Clarify timeline for moving Regents grading from 100 to 1-5 scale.

DEPARTMENT RESPONSE:

Comment beyond scope of rule.

NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

Instructional Requirement for State Aid Purposes

I.D. No. EDU-03-18-00001-ERP
Filing No. 370
Filing Date: 2018-04-10
Effective Date: 2018-07-01

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

Action Taken: Amendment of sections 175.2 and 175.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 1704 and 3604

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

Specific reasons underlying the finding of necessity: At its December 2017 meeting, the Board of Regents discussed a months-long process of stakeholder engagement and feedback related to the minimum instructional time required for State Aid. This proposed regulation reforms the existing instructional requirement, which is based on 180 days with a minimum number of instructional hours each day, to 180 days with a minimum number of instructional hours provided over the course of the school year. The proposed amendment also seeks to provide clarity around existing procedures relating to the scheduling of examinations, superintendent conference days, and extraordinary weather conditions. This revision will provide school districts with maximum flexibility in providing instructional time for their students.

It is anticipated that the revised rule will be presented for adoption as a permanent rule at the June 2018 Board of Regents meeting, which is the

first scheduled meeting after expiration of the 30-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings. However, emergency action is needed at the April 2018 meeting in order to ensure that school districts are on notice of the requirements of the proposed amendment prior to the 2018-2019 school year so that they can finalize their school calendars and complete any collective bargaining agreement negotiations needed to comply with the proposed amendment prior to the start of the school year.

Subject: Instructional Requirement for State Aid purposes.

Purpose: To clarify the requirement for 180 days of instruction for State Aid purposes.

Text of emergency/revised rule: Section 175.5 of the Regulations of the Commissioner of Education is repealed and a new section 175.5 is added, effective July 1, 2018, to read as follows:

Section 175.5. Minimum instructional hours and use of superintendents' conference days for State aid purposes.

(a) Purpose. The provisions of this section are intended to provide school districts with flexibility in meeting the 180-day requirement in order to receive State aid pursuant to Education Law § § 1704(2) and 3604(7) for actual instructional time provided to students. Nothing in this section shall be construed to preclude school districts from lengthening the school day and/or school year beyond the annual minimum instructional requirement for both instructional and non-instructional activities, including but not limited to, homeroom periods, lunch, recess, staff development activities, parent-teacher conferences, or any other purpose the school district has determined is necessary for the development of the whole child and/or to improve student achievement.

(b) Definition. "Instructional hours" shall mean an hour or a fraction of an hour, during which students are receiving instruction from a certified teacher pursuant to Part 80 of this Title in an academic subject and/or periods of time during which students are engaged in supervised study activities, including completing homework and/or the review of homework. Instructional hours shall not include periods of time where instruction and/or supervised study time is not provided to students, such as lunch or recess.

(c) Annual Hourly Requirement. Commencing with the 2018-2019 school year, for the purpose of apportionment of State aid, any school district must be in session for at least 180 school days, and during such 180 days the school district must meet the following minimum annual instructional hour requirement:

(1) For pupils in half-day kindergarten, a minimum of 450 instructional hours.

(2) For pupils in full-day kindergarten and grades one through six, a minimum of 900 instructional hours.

(3) For pupils in grades seven through twelve, a minimum of 990 instructional hours.

(d) School calendar development. To ensure that school districts meet the annual instructional requirement in order to receive State aid, it is recommended that school districts establish school year calendars that exceed the minimum requirements as provided herein by at least the average number of emergency days that such district has taken over the previous five school years.

(e) Unscheduled school delays and early releases. Instructional hours that a school district scheduled but did not execute, either because of a delay to the start of a school day or an early release, due to extraordinarily adverse weather conditions, impairment of heating facilities, insufficiency of water supply, shortage of fuel, destruction of a school building, or such other cause as may be found satisfactory by the Commissioner, may still be considered as instructional hours for State aid purposes for up to two instructional hours per session day, provided, however, that the superintendent shall certify to the Department, on a form prescribed by the Commissioner, that an extraordinary condition existed on a previously scheduled session day and that school was in session on that day.

(f) Double or overlapping sessions. The provisions of subdivision (c) of this section shall not apply to schools which operate on double or overlapping sessions, provided the written approval of the Commissioner to operate such sessions has been obtained prior to the scheduling of such sessions for any school year.

(g) The provisions of subdivision (c) of this section shall not apply where the prior written approval of the Commissioner has been obtained to conduct, in a given school year, an experimental or alternative program involving daily sessions consisting of fewer hours than would otherwise be required by the provisions of subdivision (c) of this section.

(h) Use of superintendents' conferences.

(1) Superintendents' conferences to provide staff development activities that are related to implementation of the new high learning standards and assessments, general staff orientation, curriculum development, in service education, or parent-teacher conferences may be credited toward the annual instructional requirement set forth in subdivision (c) of this section as follows:

(i) 10 hours for half-day kindergarten;

(ii) 20 hours for full-day kindergarten and grades one through six; and

(iii) 22 hours for grades seven through twelve.

Provided, however, that (A) two and one-half hours for half-day kindergarten, (B) five hours for full-day kindergarten and grades one through six, or (C) five and one-half hours for grades seven through twelve shall be considered one superintendents' conference day authorized pursuant to Education Law § 3604(8), and provided that such conferences occur on days when the regular day schools of the school district may legally be in session, and provided further that such conference days may not be scheduled for routine school administrative matters such as the grading of assignments, the preparation of pupil assignments, record-keeping, or the preparation of lesson plans. Such superintendents' conferences authorized pursuant Education Law § 3604(8), may be held, if the school district so elects, in the last two weeks of August, subject to collective bargaining requirements pursuant to article fourteen of the Civil Service Law.

(i) Regents examinations and other state assessments.

(1) Regents examinations. For only the grade levels sitting for a Regents examination, a district may schedule the average number of instructional hours it provides on non-examination days for days on which Regents examinations or Rating Day(s) are held, and have such hours count toward the annual minimum hourly requirement. On such days, attendance need not be taken, and attendance may not be assumed and claimed for State aid purposes under any circumstances. If grades seven through twelve are housed in the same building, school district officials may excuse the students from any grade level for which an examination is not being offered if their class schedules are disrupted by the Regents examination schedule and if staff are needed to properly administer such examinations.

(2) New York State Assessments. Session days during which New York State Assessments, including but not limited to the Grades 3-8 English language arts and mathematics assessments, are administered are days on which attendance must be taken and which instructional hours count toward the annual minimum hourly requirement.

(3) Other state assessments. On session days during which alternative and/or pathway assessments, as defined in section 100.2(f) and (mm) of this Title, are administered, attendance must be taken and only actual instructional hours for pupils in attendance, including the examination time, may be included within the instructional hour requirement. Grade levels that are excused from instruction on those days may not have hours count toward the requirement.

(j) Short session aid deduction. For the purposes of reducing State aid pursuant to Education Law § 3604(7), "one day" shall mean:

(1) For pupils in half-day kindergarten, two and one-half hours.

(2) For pupils in full-day kindergarten and grades one through six, five hours.

(3) For pupils in grades seven through twelve, five and one-half hours.

In the event that a school district has a total deficiency in hours that equals a fraction of hours per day pursuant to this paragraph, such deficiency shall be rounded up to the next whole day.

(k) Nothing in this section shall be construed to abrogate any conflicting provisions of any collective bargaining agreement in effect on June 30, 2018 during the term of such agreement and until the entry into a successor collective bargaining agreement to the extent required under article 14 of the Civil Service Law.

Section 175.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2018, to read as follows:

Section 175.2. Attendance records for examination days for State aid purposes.

Each school district in which Regents examinations are administered in January, April and June *may* omit the record of attendance for pupils in the grade levels in which such examinations are given, on the days designated for the administration of such examinations, for the purpose of computing average daily attendance for State aid. The record of attendance of pupils of the grade level in which the Regents Scholarship examination is given may also be omitted for the day on which such examination is administered. The record of attendance for grades located in the same buildings in which such examinations are administered may be omitted, if it is necessary to suspend instruction for such grades in order to provide adequate staff and space for the administration of such examinations. The *hours used on* examination days*, as well as the days themselves,* referred to in this section shall be counted for the purpose of satisfying the *minimum instructional hour* requirement [that school districts shall provide 180 days of instruction] *pursuant to section 175.5 of this Part.*

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on January 17, 2018, I.D. No. EDU-03-18-00001-P. The emergency rule will expire July 8, 2018.

Emergency rule compared with proposed rule: Substantial revisions were made in sections 175.2 and 175.5.

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

Data, views or arguments may be submitted to: Brian Cechnicki, NYS Education Building, Office of State Aid, 89 Washington Avenue, Room 139 EB, Albany, NY 12234, (518) 486-2573, email: regcomments@nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Proposed Rule Making in the State Register on January 17, 2018, the following substantial revisions were made to the proposed rule:

Section 175.2 of the Commissioner's regulations was amended to clarify a reference to the 180-day instructional requirement to conform to the annual hour requirement over 180 days for State aid purposes.

Section 175.5 of the Commissioner's regulations was amended to remove the word "section" throughout and replace with the section symbol (§) and to eliminate any references to BOCES since they do not receive Foundation Aid and are thus not subject to the 180-day requirement for State aid purposes.

Section 175.5 of the Commissioner's regulations was amended to eliminate the limitation on the number of Superintendent's Conference Days that may be held during the last two weeks of August to two in order to be consistent with Education Law § 3604(8).

Section 175.5 of the Commissioner's regulations was amended to allow parent-teacher conference days to be counted as a superintendent conference day as was permitted under the prior version of § 175.5(f) of the Commissioner's regulations.

The above revisions require revisions to the following sections of the previously published Regulatory Impact Statement:

2. LEGISLATIVE OBJECTIVES:

The purpose of the proposed amendment to section 175.5 of the Regulations of the Commissioner of Education is to provide school districts with flexibility around the requirement to provide 180 days of instruction for State aid purposes.

3. NEEDS AND BENEFITS:

Education Law § 3604 requires that school districts to be in session for 180 days[1], or risk losing State Aid. Under Part 175 of the Commissioner's regulations, school districts must provide a minimum number of instructional hours per day to meet this requirement. Minimum instructional hours per day are based on grade level (two and one-half hours for half-day kindergarten, five hours for full-day kindergarten through grade six, and five and one-half hours for grades seven through twelve). This minimum daily requirement, when multiplied over the statutorily required 180 school days of instruction, means that over the course of a school year, school districts are required to provide a minimum of 900 hours of instruction for full-day kindergarten through grade six and 990 hours of instruction for grades seven through twelve.

Education Law § 3604 and Part 175 of the Commissioner's regulations also address exceptions and special provisions pertaining to Superintendents' Conferences, staff development days, parent-teacher conferences, and extraordinary weather conditions:

- No sessions may be held on legal holidays (except for Election Day, and both Washington's and Lincoln's Birthday) or on Saturdays. (Education Law § 3604(8))
- Up to five days may be waived for weather/safety concerns only if there are no remaining scheduled vacation days between the event and the end of the Regents exam period. (Education Law § 3604(7))
- Up to four deficiencies of student time can be forgiven if used for Superintendent's Conferences, provided that two such days are for "staff development activities relating to implementation of the new high learning standards and assessments (Education Law § 3604(8))

Competing Tensions in Calendar Development

Through the Advisory Committee process and the regional meetings held across the state, it became apparent that there are multiple factors that are considered in the development of a school district calendar, and that many of these factors are in conflict with one another.

These factors could be organized into three simple categories:

- The amount of instructional time provided to the student;
- The number of calendar days within which districts may schedule session; and
- The number of holidays districts observe and student/teacher vacation periods they schedule.

The factors, as a result of a fixed calendar, necessarily have tensions built in among them. If a district favors more time for one of these factors, mathematically there is less time for the others.

Feedback from the Advisory Committee

In light of the existing rules and competing tensions, the following key issues were highlighted by school districts and stakeholders through the Advisory Committee process:

- Flexibility: Districts have wide-ranging calendar needs, including differences in holiday observances, vacation practices, professional development practices, and parent-teacher conferences. The 180-day rules should allow districts to meet their individual challenges to the best of their own local ability, including considering session days outside of the typical Labor Day through Rating Day period.
- Clarity: The current regulations and guidance are confusing and antiquated. Updating these documents with clear language and providing examples and model calendars will assist districts in designing their calendars consistent with the rules.
- Snow Days/Emergencies: Often, during adverse weather or other conditions, school district officials may be prohibited by other municipal and state officials from holding school in session, and it is at times unfair to force districts to make up those days.
- Collective Bargaining Agreements (CBAs): Some of the current allowances and limitations in local school district calendars may be included within local teacher contracts. Some contracts may need to be revisited to ensure compliance with the proposed amendment.
- Recess: Lastly, the Advisory Committee gathered feedback about the issue of recess in the development of school scheduling to support students. District officials noted that, based on their past interpretations, the changes to the regulations could impact recess at schools.

Proposed Regulation and Statute Changes

In an effort to address the concerns from the field, the purpose of the proposed amendment is to provide districts with more flexibility in establishing their school calendars, while maintaining the current minimum amount of instructional time. For instance, rather than require a daily minimum amount of instructional time, the proposed amendment requires the following hourly requirements for the entire school year, spread out over 180 days:

- For pupils in half-day kindergarten, a minimum of 450 instructional hours.
- For pupils in full-day kindergarten and grades one through six, a minimum of 900 instructional hours.
- For pupils in grades seven through twelve, a minimum of 990 instructional hours.

The additional flexibility afforded to districts under this proposed regulation will provide districts with greater opportunities in a number of areas. First, they will be able to hold half-day sessions, especially around holidays, that will count toward the minimum requirement. Second, it will provide them with more opportunities for integrating professional development activities into their calendar without adversely impacting instructional time for students. Third, it will also free up time throughout the school year that can be used for other activities, such as additional parent-teacher conferences and/or recess. The Department believes this flexibility will allow districts to make local determinations, within their communities, about the length of lunch, the inclusion and length of recess time, and/or parent conferences in the school calendar. The proposed amendment is only a minimum. Therefore, the Department also recommends adding a provision to the regulations to make it clear that nothing in the proposed regulation should be construed as precluding school districts from lengthening the school day and/or school year beyond the annual minimum instructional requirement. Extensions may include both instructional and non-instructional activities including but not limited to homeroom periods, lunch, recess, staff development activities, parent-teacher conferences, or any other purpose the school district has determined is necessary for the development of the whole child and/or to improve student achievement.

"Shortened Session" Days for Staff Development and Parent-Teacher Conferences

Currently, in addition to the four statutory Superintendent's Conference days, districts also have the option of utilizing "shortened session" days for staff development or parent-teacher conferences, if the instructional time in their daily calendars sufficiently exceeds the minimum that a full weeks' worth of hours are provided in less than five full days. Since shortened session days will no longer be needed under the proposed amendment, the restrictions on this allowance will be eliminated. Districts that currently offer shortened sessions and employ more than the current daily minimum instructional hours will be able to schedule such conferences and activities as they see fit, within the 180-day calendar, so long as they meet the annual total minimum hours of instruction. This will provide greater flexibility to hold conferences and activities in any block of time as the district sees fit and at any point during the year—including within the same week, or a week with a holiday.

Snow Days and Vacation Breaks

Based on feedback from the Advisory Committee, the Department also recommends pursuing legislative changes to provide additional flexibility

for districts in cases where a state or local emergency requires closure for weather or public safety reasons that are beyond the control of the school superintendent. The Department also recommends pursuing legislative changes to allow districts, at their local discretion, to schedule session days outside of the traditional Labor Day through Rating Day time period, as well as legislation to make the penalty for failing to meet the 180-day requirement more fair and equitable.

New guidance resulting from these regulatory changes will recommend that districts work with their calendar committees and communities to review their scheduled breaks and snow day assumptions, knowing that snow day contingencies are best incorporated into the calendar. In the event that such days are not fully utilized, districts will be able to provide additional days-off or additional instructional days toward the end of the school year at their local discretion.

Proposed Regulation

The Department proposes an amendment to the regulation to eliminate the current daily minimum instructional hour requirement and replace it with an aggregate yearly requirement, as explained above (i.e., 900/990 hours over 180 days for full-day kindergarten through grade six and grades seven through twelve, respectively), to provide school districts additional flexibility when establishing their school calendars. The proposed amendment also seeks to provide clarity around existing procedures relating to the scheduling of examinations, superintendent conference days, and extraordinary weather conditions. This revision will provide school districts with maximum flexibility in providing instructional time for their students.

Following the 60-day public comment period required under the State Administrative Procedure Act, the Department recommends making the following changes to the proposed amendment:

• Removing references to BOCES: BOCES do not receive Foundation Aid and are thus not subject to the 180-day requirement for State aid purposes.

• Clarifying August Superintendent Conference Days: The proposed amendment limits the number of Superintendent's Conference Days that may be held during the last two weeks of August to two. The proposed amendment is revised to eliminate this limitation, consistent with Education Law § 3604(8).

• Clarifying Parent-Teacher Conferences as a part of Superintendent Conference Days: The proposed regulation allows parent-teacher conference days to be counted as a superintendent conference day as was permitted under the prior version of § 175.5(f) of the Commissioner's regulations.

Conforming Change in § 175.2: This section of Commissioner's Regulations had a reference to 180 days that needs to be conformed to the new hourly structure.

8. ALTERNATIVES:

Many alternatives were discussed with the Advisory Committee, but the proposed amendment provides the most flexibility to school districts while still meeting the 180-day requirement.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted as a permanent rule by the Board of Regents at its June 2018 meeting. If adopted at the June 2018 meeting, the proposed amendment will become effective on July 1, 2018.

---

[1] Education Law § 1704(2) and § 3604(7); Charter schools are also required to have a minimum of 180 days of instruction but may have additional days of instruction pursuant to their charter, and are not included in this State Aid discussion as charter schools are paid through a charter school tuition formula and not State aid Full Time Equivalents.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on January 17, 2018, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule require revisions to the following sections of the previously published Statement in Lieu of a Regulatory Flexibility Analysis for Small Businesses and Local Governments:

(a) Small businesses:

The purpose of the proposed amendment is to provide school districts with flexibility relating to the requirement that there be 180 days of instruction for State aid purposes.

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 governments:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 689 public school districts in the State and to each board of cooperative educational services that seeks to obtain State aid.

2. COMPLIANCE REQUIREMENTS:

Education Law § 3604 requires that school districts to be in session for 180 days[1], or risk losing State Aid. Under Part 175 of the Commissioner's regulations, school districts must provide a minimum number of instructional hours per day to meet this requirement. Minimum instructional hours per day are based on grade level (two and one-half hours for half-day kindergarten, five hours for full-day kindergarten through grade six, and five and one-half hours for grades seven through twelve). This minimum daily requirement, when multiplied over the statutorily required 180 school days of instruction, means that over the course of a school year, school districts are required to provide a minimum of 900 hours of instruction for full-day kindergarten through grade six and 990 hours of instruction for grades seven through twelve.

Education Law § 3604 and Part 175 of the Commissioner's regulations also address exceptions and special provisions pertaining to Superintendents' Conferences, staff development days, parent-teacher conferences, and extraordinary weather conditions:

• No sessions may be held on legal holidays (except for Election Day, and both Washington's and Lincoln's Birthday) or on Saturdays. (Education Law § 3604(8))

• Up to five days may be waived for weather/safety concerns only if there are no remaining scheduled vacation days between the event and the end of the Regents exam period. (Education Law § 3604(7))

• Up to four deficiencies of student time can be forgiven if used for Superintendent's Conferences, provided that two such days are for "staff development activities relating to implementation of the new high learning standards and assessments (Education Law § 3604(8))

Competing Tensions in Calendar Development

Through the Advisory Committee process and the regional meetings held across the state, it became apparent that there are multiple factors that are considered in the development of a school district calendar, and that many of these factors are in conflict with one another.

These factors could be organized into three simple categories:

• The amount of instructional time provided to the student;

• The number of calendar days within which districts may schedule session; and

• The number of holidays districts observe and student/teacher vacation periods they schedule.

The factors, as a result of a fixed calendar, necessarily have tensions built in among them. If a district favors more time for one of these factors, mathematically there is less time for the others.

Feedback from the Advisory Committee

In light of the existing rules and competing tensions, the following key issues were highlighted by school districts and stakeholders through the Advisory Committee process:

• Flexibility: Districts have wide-ranging calendar needs, including differences in holiday observances, vacation practices, professional development practices, and parent-teacher conferences. The 180-day rules should allow districts to meet their individual challenges to the best of their own local ability, including considering session days outside of the typical Labor Day through Rating Day period.

• Clarity: The current regulations and guidance are confusing and antiquated. Updating these documents with clear language and providing examples and model calendars will assist districts in designing their calendars consistent with the rules.

• Snow Days/Emergencies: Often, during adverse weather or other conditions, school district officials may be prohibited by other municipal and state officials from holding school in session, and it is at times unfair to force districts to make up those days.

• Collective Bargaining Agreements (CBAs): Some of the current allowances and limitations in local school district calendars may be included within local teacher contracts. Some contracts may need to be revisited to ensure compliance with the proposed amendment.

• Recess: Lastly, the Advisory Committee gathered feedback about the issue of recess in the development of school scheduling to support students. District officials noted that, based on their past interpretations, the changes to the regulations could impact recess at schools.

Proposed Regulation and Statute Changes

In an effort to address the concerns from the field, the purpose of the proposed amendment is to provide districts with more flexibility in establishing their school calendars, while maintaining the current minimum amount of instructional time. For instance, rather than require a daily minimum amount of instructional time, the proposed amendment requires the following hourly requirements for the entire school year, spread out over 180 days:

• For pupils in half-day kindergarten, a minimum of 450 instructional hours.

• For pupils in full-day kindergarten and grades one through six, a minimum of 900 instructional hours.

• For pupils in grades seven through twelve, a minimum of 990 instructional hours.

The additional flexibility afforded to districts under this proposed regulation will provide districts with greater opportunities in a number of areas. First, they will be able to hold half-day sessions, especially around holidays, that will count toward the minimum requirement. Second, it will provide them with more opportunities for integrating professional development activities into their calendar without adversely impacting instructional time for students. Third, it will also free up time throughout the school year that can be used for other activities, such as additional parent-teacher conferences and/or recess. The Department believes this flexibility will allow districts to make local determinations, within their communities, about the length of lunch, the inclusion and length of recess time, and/or parent conferences in the school calendar. The proposed amendment is only a minimum. Therefore, the Department also recommends adding a provision to the regulations to make it clear that nothing in the proposed regulation should be construed as precluding school districts from lengthening the school day and/or school year beyond the annual minimum instructional requirement. Extensions may include both instructional and non-instructional activities including but not limited to homeroom periods, lunch, recess, staff development activities, parent-teacher conferences, or any other purpose the school district has determined is necessary for the development of the whole child and/or to improve student achievement.

"Shortened Session" Days for Staff Development and Parent-Teacher Conferences

Currently, in addition to the four statutory Superintendent's Conference days, districts also have the option of utilizing "shortened session" days for staff development or parent-teacher conferences, if the instructional time in their daily calendars sufficiently exceeds the minimum that a full weeks' worth of hours are provided in less than five full days. Since shortened session days will no longer be needed under the proposed amendment, the restrictions on this allowance will be eliminated. Districts that currently offer shortened sessions and employ more than the current daily minimum instructional hours will be able to schedule such conferences and activities as they see fit, within the 180-day calendar, so long as they meet the annual total minimum hours of instruction. This will provide greater flexibility to hold conferences and activities in any block of time as the district sees fit and at any point during the year—including within the same week, or a week with a holiday.

Snow Days and Vacation Breaks

Based on feedback from the Advisory Committee, the Department also recommends pursuing legislative changes to provide additional flexibility for districts in cases where a state or local emergency requires closure for weather or public safety reasons that are beyond the control of the school superintendent. The Department also recommends pursuing legislative changes to allow districts, at their local discretion, to schedule session days outside of the traditional Labor Day through Rating Day time period, as well as legislation to make the penalty for failing to meet the 180-day requirement more fair and equitable.

New guidance resulting from these regulatory changes will recommend that districts work with their calendar committees and communities to review their scheduled breaks and snow day assumptions, knowing that snow day contingencies are best incorporated into the calendar. In the event that such days are not fully utilized, districts will be able to provide additional days-off or additional instructional days toward the end of the school year at their local discretion.

Proposed Regulation

The Department proposes an amendment to the regulation to eliminate the current daily minimum instructional hour requirement and replace it with an aggregate yearly requirement, as explained above (i.e., 900/990 hours over 180 days for full-day kindergarten through grade six and grades seven through twelve, respectively), to provide school districts additional flexibility when establishing their school calendars. The proposed amendment also seeks to provide clarity around existing procedures relating to the scheduling of examinations, superintendent conference days, and extraordinary weather conditions. This revision will provide school districts with maximum flexibility in providing instructional time for their students.

Following the 60-day public comment period required under the State Administrative Procedure Act, the Department recommends making the following changes to the proposed amendment:

• Removing references to BOCES: BOCES do not receive Foundation Aid and are thus not subject to the 180-day requirement for State aid purposes.

• Clarifying August Superintendent Conference Days: The proposed amendment limits the number of Superintendent's Conference Days that may be held during the last two weeks of August to two. The proposed amendment is revised to eliminate this limitation, consistent with Education Law § 3604(8).

• Clarifying Parent-Teacher Conferences as a part of Superintendent Conference Days: The proposed regulation allows parent-teacher conference days to be counted as a superintendent conference day as was permitted under the prior version of § 175.5(f) of the Commissioner's regulations.

Conforming Change in § 175.2: This section of Commissioner's Regulations had a reference to 180 days that needs to be conformed to the new hourly structure.

4. COMPLIANCE COSTS:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements on school districts. Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed provides significant flexibility to school districts across the State relating to the requirement that they provide 180 days of instruction for State aid purposes.

---

[1] Education Law § 1704(2) and § 3604(7); Charter schools are also required to have a minimum of 180 days of instruction but may have additional days of instruction pursuant to their charter, and are not included in this State Aid discussion as charter schools are paid through a charter school tuition formula and not State aid Full Time Equivalents.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on January 17, 2018, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule require revisions to Sections 1, 2 and 4. of the previously published Rural Area Flexibility Analysis.

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

This proposed amendment applies to all New York State school districts who wish to claim State aid commencing in the 2018-2019 school year, 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:

Education Law § 3604 requires that school districts to be in session for 180 days[1], or risk losing State Aid. Under Part 175 of the Commissioner's regulations, school districts must provide a minimum number of instructional hours per day to meet this requirement. Minimum instructional hours per day are based on grade level (two and one-half hours for half-day kindergarten, five hours for full-day kindergarten through grade six, and five and one-half hours for grades seven through twelve). This minimum daily requirement, when multiplied over the statutorily required 180 school days of instruction, means that over the course of a school year, school districts are required to provide a minimum of 900 hours of instruction for full-day kindergarten through grade six and 990 hours of instruction for grades seven through twelve.

Education Law § 3604 and Part 175 of the Commissioner's regulations also address exceptions and special provisions pertaining to Superintendents' Conferences, staff development days, parent-teacher conferences, and extraordinary weather conditions:

• No sessions may be held on legal holidays (except for Election Day, and both Washington's and Lincoln's Birthday) or on Saturdays. (Education Law § 3604(8))

• Up to five days may be waived for weather/safety concerns only if there are no remaining scheduled vacation days between the event and the end of the Regents exam period. (Education Law § 3604(7))

• Up to four deficiencies of student time can be forgiven if used for Superintendent's Conferences, provided that two such days are for "staff development activities relating to implementation of the new high learning standards and assessments (Education Law § 3604(8))

Competing Tensions in Calendar Development

Through the Advisory Committee process and the regional meetings held across the state, it became apparent that there are multiple factors that are considered in the development of a school district calendar, and that many of these factors are in conflict with one another.

These factors could be organized into three simple categories:

• The amount of instructional time provided to the student;

• The number of calendar days within which districts may schedule session; and

• The number of holidays districts observe and student/teacher vacation periods they schedule.

The factors, as a result of a fixed calendar, necessarily have tensions built in among them. If a district favors more time for one of these factors, mathematically there is less time for the others.

Feedback from the Advisory Committee

In light of the existing rules and competing tensions, the following key issues were highlighted by school districts and stakeholders through the Advisory Committee process:

• Flexibility: Districts have wide-ranging calendar needs, including differences in holiday observances, vacation practices, professional development practices, and parent-teacher conferences. The 180-day rules should allow districts to meet their individual challenges to the best of their own local ability, including considering session days outside of the typical Labor Day through Rating Day period.

• Clarity: The current regulations and guidance are confusing and antiquated. Updating these documents with clear language and providing examples and model calendars will assist districts in designing their calendars consistent with the rules.

• Snow Days/Emergencies: Often, during adverse weather or other conditions, school district officials may be prohibited by other municipal and state officials from holding school in session, and it is at times unfair to force districts to make up those days.

• Collective Bargaining Agreements (CBAs): Some of the current allowances and limitations in local school district calendars may be included within local teacher contracts. Some contracts may need to be revisited to ensure compliance with the proposed amendment.

• Recess: Lastly, the Advisory Committee gathered feedback about the issue of recess in the development of school scheduling to support students. District officials noted that, based on their past interpretations, the changes to the regulations could impact recess at schools.

Proposed Regulation and Statute Changes

In an effort to address the concerns from the field, the purpose of the proposed amendment is to provide districts with more flexibility in establishing their school calendars, while maintaining the current minimum amount of instructional time. For instance, rather than require a daily minimum amount of instructional time, the proposed amendment requires the following hourly requirements for the entire school year, spread out over 180 days:

• For pupils in half-day kindergarten, a minimum of 450 instructional hours.

• For pupils in full-day kindergarten and grades one through six, a minimum of 900 instructional hours.

• For pupils in grades seven through twelve, a minimum of 990 instructional hours.

The additional flexibility afforded to districts under this proposed regulation will provide districts with greater opportunities in a number of areas. First, they will be able to hold half-day sessions, especially around holidays, that will count toward the minimum requirement. Second, it will provide them with more opportunities for integrating professional development activities into their calendar without adversely impacting instructional time for students. Third, it will also free up time throughout the school year that can be used for other activities, such as additional parent-teacher conferences and/or recess. The Department believes this flexibility will allow districts to make local determinations, within their communities, about the length of lunch, the inclusion and length of recess time, and/or parent conferences in the school calendar. The proposed amendment is only a minimum. Therefore, the Department also recommends adding a provision to the regulations to make it clear that nothing in the proposed regulation should be construed as precluding school districts from lengthening the school day and/or school year beyond the annual minimum instructional requirement. Extensions may include both instructional and non-instructional activities including but not limited to homeroom periods, lunch, recess, staff development activities, parent-teacher conferences, or any other purpose the school district has determined is necessary for the development of the whole child and/or to improve student achievement.

"Shortened Session" Days for Staff Development and Parent-Teacher Conferences

Currently, in addition to the four statutory Superintendent's Conference days, districts also have the option of utilizing "shortened session" days for staff development or parent-teacher conferences, if the instructional time in their daily calendars sufficiently exceeds the minimum that a full weeks' worth of hours are provided in less than five full days. Since shortened session days will no longer be needed under the proposed amendment, the restrictions on this allowance will be eliminated. Districts that currently offer shortened sessions and employ more than the current daily minimum instructional hours will be able to schedule such conferences and activities as they see fit, within the 180-day calendar, so long as they meet the annual total minimum hours of instruction. This will provide greater flexibility to hold conferences and activities in any block of time as the district sees fit and at any point during the year—including within the same week, or a week with a holiday.

Snow Days and Vacation Breaks

Based on feedback from the Advisory Committee, the Department also recommends pursuing legislative changes to provide additional flexibility for districts in cases where a state or local emergency requires closure for weather or public safety reasons that are beyond the control of the school superintendent. The Department also recommends pursuing legislative changes to allow districts, at their local discretion, to schedule session days outside of the traditional Labor Day through Rating Day time period, as well as legislation to make the penalty for failing to meet the 180-day requirement more fair and equitable.

New guidance resulting from these regulatory changes will recommend that districts work with their calendar committees and communities to review their scheduled breaks and snow day assumptions, knowing that snow day contingencies are best incorporated into the calendar. In the event that such days are not fully utilized, districts will be able to provide additional days-off or additional instructional days toward the end of the school year at their local discretion.

Proposed Regulation

The Department proposes an amendment to the regulation to eliminate the current daily minimum instructional hour requirement and replace it with an aggregate yearly requirement, as explained above (i.e., 900/990 hours over 180 days for full-day kindergarten through grade six and grades seven through twelve, respectively), to provide school districts additional flexibility when establishing their school calendars. The proposed amendment also seeks to provide clarity around existing procedures relating to the scheduling of examinations, superintendent conference days, and extraordinary weather conditions. This revision will provide school districts with maximum flexibility in providing instructional time for their students.

Following the 60-day public comment period required under the State Administrative Procedure Act, the Department recommends making the following changes to the proposed amendment:

• Removing references to BOCES: BOCES do not receive Foundation Aid and are thus not subject to the 180-day requirement for State aid purposes.

• Clarifying August Superintendent Conference Days: The proposed amendment limits the number of Superintendent's Conference Days that may be held during the last two weeks of August to two. The proposed amendment is revised to eliminate this limitation, consistent with Education Law § 3604(8).

• Clarifying Parent-Teacher Conferences as a part of Superintendent Conference Days: The proposed regulation allows parent-teacher conference days to be counted as a superintendent conference day as was permitted under the prior version of § 175.5(f) of the Commissioner's regulations.

Conforming Change in § 175.2: This section of Commissioner's Regulations had a reference to 180 days that needs to be conformed to the new hourly structure.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment provides significant flexibility to school districts, including those located in rural areas of the State, while still meeting the 180-day requirement in statute.

---

[1] Education Law § 1704(2) and § 3604(7); Charter schools are also required to have a minimum of 180 days of instruction but may have additional days of instruction pursuant to their charter, and are not included in this State Aid discussion as charter schools are paid through a charter school tuition formula and not State aid Full Time Equivalents.

Revised Job Impact Statement

The purpose of the proposed amendment to section 175.5 of the Commissioner's regulations is to provide flexibility to school districts and BOCES on the instructional requirement related to the180 days of instruction required for State aid purposes.

Because it is evident from the nature of the proposed amendments that they will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken.

Assessment of Public Comment

Since publication of Proposed Rule Making in the State Register on January 17, 2018, the State Education Department (SED) received several comments:

1. COMMENT:

One commenter asked that school districts be allowed to begin the school year prior to Labor Day.

DEPARTMENT RESPONSE:

SED has proposed legislation that would authorize school districts to commence the school prior to September 1, subject to local discretion.

2. COMMENT:

Multiple commenters were concerned about the provision that allows for up to two hours of a weather delay or early release to be counted toward the total yearly aggregate instructional hours, noting that their district often utilizes three-hour delays.

DEPARTMENT RESPONSE:

School districts have, traditionally but not necessarily universally, utilized one or two-hour delays on days with inclement weather to allow for their local municipalities to clear the roads. The existing regulation allows for such delays to occur without penalizing the district for State aid purposes (i.e., allowing the day to count).

SED believes that allowing anything more than two hours would significantly reduce the amount of instructional time provided to students, and that a delay of three hours, for example, would mean in many cases districts would be providing as little as a half or less of a scheduled school day; with such a reduced amount of hours, the school district should consider simply closing for the full day for the sake of student safety.

3. COMMENT:

One commenter was concerned about the provision that allowed, in buildings where grades seven through twelve are housed together, for non-tested grades to be released for the day of a Regents examination, but still have their scheduled hours count, if staff were needed to administer the exams. The concern is that the regulation applies only to buildings with seven through twelve, but that the same issue arises in buildings that are just the high school grades (nine through twelve).

DEPARTMENT RESPONSE:

The allowance for dismissals included in the regulation is consistent with current guidance. Moreover, the Department does not believe that many staff (outside of 7-12) would be needed to administer these exams.

4. COMMENT:

One commenter requested that the hours for final exams for grades seven and eight be counted in the same manner as the Regents exams for grades nine through twelve.

DEPARTMENT RESPONSE:

If the commenter means that some final exams for grades seven and eight should be offered during Regents examination week, but students who are not taking such exams can be dismissed from school, the Department points out that the Regents exams are the only exams treated in this way, and this is consistent with past practice. Other exams, such as local examination finals and the grades 3-8 State assessments, still require all students to be in session for those session days to count toward the 180-day requirement. The revised regulation is not changing that practice; districts are still required to schedule instructional time for students in those grade levels who are not taking exams.

5. COMMENT:

Multiple commenters requested that time that students spend travelling between class periods ("passing time") be counted as instructional time.

DEPARTMENT RESPONSE:

The proposed amendment merely sets the minimum amount of instructional time for State aid purposes. Minimum instructional hours, by definition, are not intended to capture the full school day that a district may offer to its students. Passing time is not time during which the students are engaged in actual instructional activities, and it is assumed that districts are building in both the required minimum instructional time and any operational non-instructional time such as passing time and homeroom. In addition, see Response to Comment #27.

6. COMMENT:

One commenter recommended that the regulations be clarified in its application to preschool special education ("4410") and 853 school programs, including an allowance for "instructional lunch," which is provided in some early and special education programs, to be considered as instructional time.

DEPARTMENT RESPONSE:

The proposed regulation only relates to the minimum instructional hours required by school districts in order to receive their full allocation of Foundation Aid. Since 4410 and 853 programs do not receive Foundation Aid, their instructional requirements do not fall under either the existing or proposed regulations, and as such do not need to be addressed herein.

7. COMMENT:

Multiple commenters were concerned about the proposed regulation's limit to two days on the number of Superintendent's Conference Days that can be held in the last two weeks of August, citing that neither statute nor existing guidance carry such limitation.

DEPARTMENT RESPONSE:

SED agrees that Education Law § 3604(8) does not contain a limitation of two superintendent conference days in August and has revised the proposed regulation to remove this limitation and reflect the statutory allowance.

8. COMMENT:

Multiple commenters wrote in support of the proposed regulation, specifically related to the additional flexibility offered to school districts in the development of their calendars. In addition, one commenter supported the codification of the Department's longstanding practice of defining instructional time as being exclusive of lunch and recess.

DEPARTMENT RESPONSE:

No response is required because the comment was supportive.

9. COMMENT:

Multiple commenters were concerned about the apparent exclusion of parent-teacher conferences as an allowable use of the four Superintendent Conference Days that are included within the minimum instruction requirement. They stated that parent-teacher conferences were specifically authorized in the statute governing Superintendent Conference Days and in existing regulation and guidance and were concerned that removing that allowance could potentially create collective bargaining issues.

DEPARTMENT RESPONSE:

SED agrees and the proposed amendment has been revised to reflect this allowance.

10. COMMENT:

One commenter requested that the regulation be amended to allow for session days for middle and high school students to be held after the end of the June Rating Day but before July 1st, noting that such allowance would establish consistency across grade levels.

DEPARTMENT RESPONSE:

The Department understands the concern, but is equally concerned with the quality of instructional time that would be offered after all Regents and final examinations have been administered and course grading is completed in anticipation of graduation, which typically occurs before July 1st. In recent years, including the current 2017-18 school years, when significant weather conditions have impacted schedules statewide, SED has allowed for one day after Rating Day to be used for an unused Superintendent's Conference Day to make up one such cancelled day (information available here: https://stateaid.nysed.gov/attendance/sched_superintendents_conf_day_june_2018.htm). The Department will continue this practice. Therefore, no revisions are necessary.

11. COMMENT:

One commenter requested clarification about whether districts must still meet the 180-day requirement so long as they've met the annual aggregate minimum hourly requirement.

DEPARTMENT RESPONSE:

Yes, Education Law § 3604 requires that districts be in session for no less than 180 days or be subject to a financial penalty. Therefore, school districts must continue to hold session for 180 days and meet the annual minimal instructional time over those 180 days.

12. COMMENT:

Two commenters recommended that references to BOCES be removed from the proposed regulation as they ultimately do not receive state aid.

DEPARTMENT RESPONSE:

SED agrees and has removed references to BOCES from the proposed regulatory language.

13. COMMENT:

One commenter noted that it is not mandated that districts provide education at the kindergarten level, and it could be problematic to require a minimum number of hours.

DEPARTMENT RESPONSE:

The commenter is correct that kindergarten is not mandated in all districts. The proposed regulation does not mandate kindergarten by virtue of establishing a minimum number of hours for kindergarten. Instead, it is establishing the minimum number of hours required for either a half day or full day kindergarten program, if a school district decides to offer it for State aid purposes only.

14. COMMENT:

One commenter asked for clarification on how study halls are counted for purposes of the requirement, as not all students have them built into their schedules.

DEPARTMENT RESPONSE:

Supervised study halls count toward the minimum instructional time. With respect to the commenter's question relating to what happens if not all students have them built into their calendars, the school district must review its calendar and student schedules to determine if it is providing the minimum instructional time to its students (which can be done in a variety of ways for its varying student population).

15. COMMENT:

One commenter asked for clarification about how time for administering non-state assessments will or will not be counted within the requirement.

DEPARTMENT RESPONSE:

In general, all time for administering local exams can be treated as regular instruction time. This does not preclude districts from having students sit for other examinations and still have that time count as instructional time.

16. COMMENT:

One commenter asked for clarification on how time for Regents examinations are defined and counted within the new proposed requirement.

DEPARTMENT RESPONSE:

In general, if all students in a school remain in class session during the

administration of Regents examinations, those days may be counted in the same manner that an average instructional day is counted.

However, if a school is electing to dismiss students who are not taking tests on days during which Regents exams are administered in a building housing grades seven through twelve, the following rules will apply:

- If the dismissals are occurring in a school building where no Regents exams are being administered, no time after dismissal may count toward the minimum instructional time requirement (i.e., if there is a half-day dismissal, no time after dismissal may be counted).

- If the dismissals occur in a building where Regents exams are being administered, and the students' schedules are disrupted by the exams because of staff needs for administering them or because some number of students are taking said exams, the district may claim—for the dismissed grades—the number of hours the exams are administered for the students taking exams. For instance, if a grade is dismissed for the full day, and they are normally scheduled for six instructional hours, and the Regents exams are scheduled for three hours, the dismissed grades may be credited for three instructional hours that day.

Again, as noted in comment #4, the regulation limits this practice to only buildings that house grades seven through twelve.

17. COMMENT:

One commenter asked for clarification on the definition of "overlapping sessions".

DEPARTMENT RESPONSE:

Overlapping sessions refer to a historical occurrence where large city school districts had building space limitations that required them to split their student populations and hold two independent sessions during the course of one school day to accommodate the student population. It is the Department's understanding that currently, no school districts are utilizing this exception.

18. COMMENT:

One commenter noted that the provision allowing for up-to-two hours per day for weather delays or early dismissals will require superintendents to certify those occurrences and could be a new reporting burden. They asked for clarification and potentially relief as it could be seen as an added mandate.

DEPARTMENT RESPONSE:

The Department will be developing additional guidance and forms to implement the proposed regulation. It is important that the Department maintains its ability to ensure full compliance with the requirement. However, the Department will take this concern under consideration and will attempt to develop guidelines and a process that are as least burdensome as possible.

19. COMMENT:

One commenter asked how the Department calculated the number of hours authorized for Superintendent's Conference Days and for clarification on whether half days used for professional development can be combined into full days. Another also asked for confirmation that time can be done in increments less than one full day.

DEPARTMENT RESPONSE:

The number of hours allowed permitted for Superintendent's Conference Days under the proposed regulation is an extension of the current statute and regulation. Currently, Education Law § 3604 allows for four superintendent conference days, and the regulations define a minimum day as two and one-half hours for half-day kindergarten, five hours for kindergarten through grade six, and five and one-half hours for grades seven through twelve. The proposed regulation is simply the product of the four statutory days multiplied by the existing minimum daily hours for the respective grade levels to determine an aggregate number of hours.

Under the proposed regulation, these hours can be used in increments as small as an hour and as much as a full-day, subject to the school district's local discretion, subject to collective bargaining if required under Article 14 of the Civil Service Law.

20. COMMENT:

One commenter asked for clarification on how travel time to and from BOCES should be counted for students who attend programs at those facilities.

DEPARTMENT RESPONSE:

The regulation is intended to apply to the schedule the district is providing to the majority of students. Small variances in individual schedules for a subset of students, such as travel time to a BOCES facility, independent study programs, or extended day programs, will neither count toward or against districtwide compliance.

21. COMMENT:

One commenter requested that the Department consider the possibility of offering districts the ability to implement "virtual snow days" that allow students and teachers to engage in instructional activities online on days during which school is unexpectedly cancelled.

DEPARTMENT RESPONSE:

This particular allowance is not contemplated under the existing or proposed regulations. The Department would need to research further the legal authorizations for such an allowance and the practicality of its implementation.

22. COMMENT:

One commenter asked for clarification on how school districts should comply with the proposed regulation in the interim while, in some cases, a new collective bargaining agreement is negotiated.

DEPARTMENT RESPONSE:

The proposed amendment provides that "nothing in this section shall be construed to abrogate any conflicting provisions of a collective bargaining agreement in effect on June 30, 2018 during the term of such agreement and until the entry into a successor collective bargaining agreement to the extent required under article 14 of the Civil Service Law."

23. COMMENT:

One commenter requested clarification about whether or not a school district can use a full day of Superintendent's Conference Day time for parent-teacher conferences.

DEPARTMENT RESPONSE:

As noted in comment #10, the Department recommends that the proposed amendment be revised to allow Superintendent's Conference Days to used for parent-teacher conferences. The amount of such hours that can be used for such purpose is up to the district's local discretion, and may be executed as a full day within the limitations of the authorized time (i.e., up to the maximum of ten hours for half-day kindergarten, twenty hours for kindergarten through grade six, or twenty-two and one-half hours for grades seven through twelve).

24. COMMENT:

One commenter asked for clarification about during which school year the proposed regulations would take effect.

DEPARTMENT RESPONSE:

The proposed regulations will be in effect for school years beginning with 2018-19. The existing regulation will still apply for the 2017-18 school year calendars, which school districts will report to SED as a part of their Fall 2018 aid claim submissions.

25. COMMENT:

One commenter asked for clarification if the rules for half-day parent-teacher conferences would change under the proposed regulations.

DEPARTMENT RESPONSE:

Under the proposed regulation, the rule related to what was previously referred to as "shortened session" parent-teacher conferences will no longer apply. They are being replaced with parent-teacher conferences that can be scheduled in one of two ways:

1. As part of the four authorized Superintendent's Conference Days, up to the maximum of ten hours for half-day kindergarten, twenty hours for kindergarten through grade six, or twenty-two and one-half hours for grades seven through twelve. Parent-teacher conference hours may be included within the required aggregate annual minimum instructional hours; or

2. If scheduled outside of the four authorized Superintendent's Conference Days, parent-teacher conferences can be scheduled at local district discretion at any time, for any length of time, consistent with the scheduling on non-instructional time described in comment #1. Such hours may not be included in the aggregate annual minimum instructional hours.

26. COMMENT:

One commenter asserted that the annual aggregate minimum instructional hours required in the proposed regulation are incongruent with the instructional units of study and graduation requirements detailed in the Commissioner of Education's Part 100 Regulations. Specifically, in that regulation, units of study are defined as 180 minutes (three hours) per week, and twenty-two credits are required to graduate. They assert that those requirements translate to 720 hours at the high school level, rather than the 990 hours in the proposed regulation, even after accounting for additional instructional time (forty minutes instead of thirty-six) and one forty-minute study hall.

DEPARTMENT RESPONSE:

First, the computation of the aggregate annual minimum instructional hours in the proposed regulation is the product of the current daily minimum instructional hours over the required 180 days. Therefore, there are no changes, in the interpretation of the Department, to how many hours are required and what may be counted in those hours in the shift from minimum daily hours to the annual requirement.

Second, the claim that the graduation requirements (plus two courses and study halls) translate to 720 hours per year is incorrect. The example used actually appears to include study hall time, which would increase the estimate from 720 hours to 840 hours. Second, the estimate also fails to include time for science labs, which are required in order to qualify to take a science Regents examination and are in addition to the required classroom instruction associated with earning a unit of credit. Moreover, SED believes that, as is currently the case, students should be provided more instruction than the minimum required for graduation to ensure the development of the whole child.

27. COMMENT:
Multiple commenters requested that the proposed regulation be amended to allow for recess or physical activity periods to count as instructional hours, noting that such activities are important to the overall physical and social development of students.
DEPARTMENT RESPONSE:
SED recognizes the importance of physical education instruction and any physical education instruction that complies with Part 135 of the Commissioner's regulations by a certified instructor shall count toward the minimum instructional time for State aid purposes. SED also recognizes that there are a variety of non-instructional activities that may occur in the school day that may positively impact the development of students, including recess.
The proposed amendment is only a minimum. Therefore, the Department also added a provision to the regulations to make it clear that nothing in the proposed regulation should be construed as precluding school districts from lengthening the school day and/or school year beyond the annual minimum instructional requirement. Extensions may include both instructional and non-instructional activities including but not limited to homeroom periods, lunch, recess, staff development activities, parent-teacher conferences, or any other purpose the school district has determined is necessary for the development of the whole child and/or to improve student achievement.
28. COMMENT:
One commenter requested that final guidance from the Department and any Frequently Asked Questions document published should also include information from the Office of Special Education and the State Office for Religious and Independent Schools as to how the requirement impacts those programs.
DEPARTMENT RESPONSE:
The Department will take that request under consideration and attempt to provide as much information as possible in the guidance it produces.
29. COMMENT:
One commenter noted concern about the additional flexibility provided to school districts under the proposed regulation could lead to some scheduling conflicts for nonpublic schools, as the public schools utilize the flexibility in ways to add additional half days.
DEPARTMENT RESPONSE:
The proposed regulation does not in any way change the obligations that public school districts have in providing transportation and certain educational services to nonpublic school students. The Department understands this concern and will monitor the developments closely as school districts make changes to their calendars as a result of this proposed regulation. The Department also recommends that nonpublic schools and school districts work collaboratively when developing their respective school calendars.
30. COMMENT:
One commenter requested clarification confirming whether "preannounced" closings or "delayed starts" due to weather or other emergencies must be rescheduled, specifically as they relate to half-day preschool special education programs which are generally two and one-half hours in length.
DEPARTMENT RESPONSE:
As stated above, the proposed amendment does not apply to 4410 programs or 853 schools.
31. COMMENT:
Multiple commenters were concerned about the potential impact that "significant" changes to the school year calendar could have on the state's tourism industry, including the Department's proposed legislation to allow for student instructional days to be held prior to September 1st.
DEPARTMENT RESPONSE:
The proposed regulation does not add any additional time requirements on school districts or preclude districts from adopting any existing vacation schedules. The overall amount of instructional time remains the same as it was under the previous regulation, with additional flexibility for school districts to meet the minimum requirement.
The Department has proposed legislation to allow session days prior to September 1, but that legislation has not yet been enacted, and would only be utilized at the discretion of local school districts.

NOTICE OF ADOPTION

New Pathway to a NYS High School Equivalency Diploma

I.D. No. EDU-44-17-00009-A
Filing No. 369
Filing Date: 2018-04-10
Effective Date: 2018-04-25

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

Action taken: Amendment of section 100.7 of Title 8 NYCRR.
Statutory authority: Education Law, sections 101, 207, 208, 209, 305(1), (2), 308, 309 and 3204(3)
Subject: New Pathway to a NYS High School Equivalency Diploma.
Purpose: Allows students to use passing scores on certain Regents examinations in lieu of certain sub-tasks on TASC.
Text or summary was published in the November 1, 2017 issue of the Register, I.D. No. EDU-44-17-00009-P.
Final rule as compared with last published rule: No changes.
Revised rule making(s) were previously published in the State Register on February 7, 2018.
Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, 89 Washington Avenue, Room 148, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov
Initial Review of Rule
As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.
Assessment of Public Comment
Since publication of the Notice of Revised Rule Making in the State Register on February 7, 2018 the State Education Department (SED) received the following comments on the proposed amendment:
1. COMMENT:
Commenter expressed support for the proposed amendments, and requests that NYSED mandate that high schools provide an "official NYSED HSE transcript" for those students who are considering exiting high school without having graduated.
DEPARTMENT RESPONSE:
As noted in the response to Comment #12 in the previously published Assessment of Public Comment, it is the responsibility of the applicant to request from the Department an official NYSED HSE transcript via US Mail. The Department anticipates issuing guidance on the proposal and will consider encouraging school districts to recommend that such students submit an application (Attachment R) to NYSED when they exit high school. No revisions are necessary at this time.
2. COMMENT:
Commenter also requested that the proposed amendment be revised to allow students with disabilities to use passing scores on Regents Exams as defined by 100.5(b)(7)(vi)(c), also known as the "Compensatory Safety Net." Commenter additionally requested that passing Regents Competency Test (RCT) scores be allowed as substitution for corresponding TASC subtests.
DEPARTMENT RESPONSE:
The proposed amendments limit the examinations for which a candidate may substitute a passing score to those approved by the Commissioner pursuant to section 100.2(f) or (mm) of the Commissioner's regulations, and do not include Regents Competency Tests. The compensatory safety net scores as described in Commissioner's regulation § 100.5(b)(7)(vi)(c), are not considered passing Regents Exam scores as defined in the proposed rule, and therefore may not be substituted for the corresponding high school equivalency exam sub-test or sub-tests. As a result, the Department does not believe any revisions are necessary at this time. See generally the response to Comment #14 on the previously published Assessment of Public Comment.

NOTICE OF ADOPTION

Biological Products in the Profession of Pharmacy

I.D. No. EDU-52-17-00007-A
Filing No. 368
Filing Date: 2018-04-10
Effective Date: 2018-04-25

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

Action taken: Amendment of sections 29.7 and 63.68 of Title 8 NYCRR.
Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6509(9), 6802, 6810, and 6816-a; L. 2017, ch. 357
Subject: Biological products in the profession of pharmacy.
Purpose: Establishes requirements for substitution of interchangeable biological products for prescribed products.
Text or summary was published in the December 27, 2017 issue of the Register, I.D. No. EDU-52-17-00007-EP.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, 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

To Allow Individual Evaluation for Certain Certificate Titles in the Classroom Teaching Service

I.D. No. EDU-17-18-00006-P

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

Proposed Action: Amendment of sections 80-3.3 and 80-3.7 of Title 8 NYCRR.

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

Subject: To allow individual evaluation for certain certificate titles in the classroom teaching service.

Purpose: To help address the reported teacher shortage in NYS.

Text of proposed rule: 1. The introductory paragraph for section 80-3.7 of the Regulations of the Commissioner of Education shall be amended, effective September 2, 2018, to read as follows:

This section prescribes requirements for meeting the education requirements for classroom teaching certificates through individual evaluation. [Except as otherwise provided in this section, this option for meeting education requirements shall only be available for candidates who apply for a certificate in childhood education by February 1, 2007 and for candidates who apply for a certificate in early childhood education (birth-grade 2), generalist in middle childhood education (grades 5-9), English language arts (grades 5-9), English language arts (grades 7-12), literacy (birth-grade 6) and literacy grades (5-12) on or before April 30, 2014 provided that upon application candidates qualify for such certificate.] Candidates who apply for any [other certificate] *of the certificates* in the classroom teaching service *as described herein* may continue to meet the education requirements for classroom teaching certificates through individual evaluation. Candidates with a graduate degree in science, technology, engineering or mathematics who apply for an initial teaching certificate under subclause (a)(3)(ii)(c)(3) of this section may continue to meet the education requirements for classroom teaching certificates through individual evaluation after May 1, 2014. The candidate must have achieved a 2.5 cumulative grade point average or its equivalent in the program or programs leading to any degree used to meet the requirements for a certificate under this section. In addition, a candidate must have achieved at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course in order for the semester hours associated with that course to be credited toward meeting the content core or pedagogical core semester hour requirements for a certificate under this section. All other requirements for the certificate, including but not limited to, examination and/or experience requirements, as prescribed in this Part, must also be met.

2. Subparagraph (iii) of paragraph (3) of subdivision (a) of section 80-3.3 of the Regulations of the Commissioner of Education shall be amended, effective September 2, 2018, to read as follows:

(iii) The option to complete the education requirements for the certificates specified in subparagraphs (i) and (ii) of this paragraph through equivalent study, as determined by individual evaluation in accordance with the requirements of section 80-3.7 of this Subpart will continue to be available for individuals who hold an initial, professional, provisional or permanent certificate in the classroom teaching service. [For candidates who do not already hold an initial, professional, provisional or permanent certificate in the classroom teaching service, this option will only be available to candidates who apply for a certificate in childhood education by February 1, 2007 or for candidates who apply for a certificate in early childhood education (birth-grade 2), generalist in middle childhood education (grades 5-9), English language arts (grades 5-9), English language arts (grades 7-12), literacy (birth-grade 6) and literacy grades (5-12) on or before April 30, 2014 and who upon application qualify for such certificate; or for candidates who apply for any other certificate in the classroom teaching service.]

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

Data, views or arguments may be submitted to: Rebecca Coyle, NYS Education Department, Office of Higher Education, 89 Washington Avenue, Room 975 EBA, Albany, NY 12234, (518) 486-3633, email: regcomments@nysed.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Education Law 210 (not subdivided) authorizes the Regents to register domestic and foreign institutions in terms of New York standards.

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

The purpose of the proposed amendments to Sections 80-3.3 and 80-3.7 of the Regulations of the Commissioner of Educations is to allow individual evaluation for certain certificate titles in the classroom teaching service as a pathway for certification. Under individual evaluation, candidates are required to submit evidence of coursework and field experience to the Department for evaluation. The Office of Teaching Initiatives reviews candidates' transcript(s) and supporting materials to determine if the certification requirements are met.

3. NEEDS AND BENEFITS:

For each certificate title in the classroom teaching service, there are typically several pathways for certification. In 2003, the Board of Regents revised the certification requirements for teachers by creating a pathway for individual evaluation for candidates who have not completed an approved teacher education program. The original individual evaluation pathway was established as a means to address teacher shortage areas and included a sunset date of February 1, 2007 for certificates in childhood education and February 1, 2009 for all other certificates in the classroom teaching service. These dates were ultimately extended, resulting in a continuation of individual evaluation for all certificate titles except for Early Childhood, Generalist in Middle Childhood Education, ELA, and Literacy.

The Department has been contacted by numerous districts in different areas of New York State that have indicated that they are having difficulty finding qualified teachers in certain certificate areas. To help address the reported teacher shortages in New York State, the Department is proposing to reinstate individual evaluation for the following certificate titles: Early Childhood Education (Birth-Grade 2), Childhood Education (Grades 1-6), Generalist in Middle Childhood Education (Grades 5-9), English Language Arts (Grades 5-9 and Grades 7-12), and Literacy (Birth-Grade 6 and Grades 5-12). The proposed change will allow qualified candidates to become certified in these areas, creating larger pools of qualified teachers for school district hiring.

4. COSTS:

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

b. Costs to local government: The amendments do not impose any costs on local government.

c. Costs to private regulated parties: The amendment do 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 Department believes that uniform standards for certification must be established across the State. Therefore, no alternatives were considered for those located in rural areas of the State.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted as a permanent rule by the Board of Regents at its July 2018 meeting. If adopted at the July 2018 meeting, the proposed amendment will become effective on September 2, 2018.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed amendments to Sections 80-3.3 and 80-3.7 of the Regulations of the Commissioner of Educations is to reinstate individual evaluation for certain certificate titles in the classroom teaching service as a pathway for certification.

The amendment does not impose any new recordkeeping or other compliance requirements, and will not have an adverse economic impact on 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 is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The purpose of the proposed amendments to Sections 80-3.3 and 80-3.7 of the Regulations of the Commissioner of Educations is to reinstate individual evaluation for certain certificate titles in the classroom teaching service as a pathway for certification. For each certificate title in the classroom teaching service, there are typically several pathways for certification. In 2003, the Board of Regents revised the certification requirements for teachers by creating a pathway for individual evaluation for candidates who have not completed an approved teacher education program. The original individual evaluation pathway was established as a means to address teacher shortage areas and included a sunset date of February 1, 2007 for certificates in childhood education and February 1, 2009 for all other certificates in the classroom teaching service. These dates were ultimately extended, resulting in a continuation of individual evaluation for all certificate titles except for Early Childhood, Generalist in Middle Childhood Education, ELA, and Literacy.

The Department has been contacted by numerous districts in different areas of New York State that have indicated that they are having difficulty finding qualified teachers in certain certificate areas. To help address the reported teacher shortages in New York State, the Department is proposing to reinstate individual evaluation for the following certificate titles: Early Childhood Education (Birth-Grade 2), Childhood Education (Grades 1-6), Generalist in Middle Childhood Education (Grades 5-9), English Language Arts (Grades 5-9 and Grades 7-12), and Literacy (Birth-Grade 6 and Grades 5-12). The proposed change will allow qualified candidates to become certified in these areas, creating larger pools of qualified teachers for school district hiring.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any new recordkeeping or other compliance requirements on school districts and BOCES.

3. PROFESSIONAL SERVICES:

No professional services are needed to comply with the proposed amendment.

4. COMPLIANCE COSTS:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

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

7. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

This proposed amendment applies to all individuals in New York State pursuing individual evaluation for certain certificate titles in the classroom teaching service, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The purpose of the proposed amendments to Sections 80-3.3 and 80-3.7 of the Regulations of the Commissioner of Educations is to reinstate individual evaluation for certain certificate titles in the classroom teaching service as a pathway for certification. Under individual evaluation, candidates are required to submit evidence of coursework and field experience to the Department for evaluation. The Office of Teaching Initiatives reviews candidates' transcript(s) and supporting materials to determine if the certification requirements are met.

For each certificate title in the classroom teaching service, there are typically several pathways for certification. In 2003, the Board of Regents revised the certification requirements for teachers by creating a pathway for individual evaluation for candidates who have not completed an approved teacher education program. The original individual evaluation pathway was established as a means to address teacher shortage areas and included a sunset date of February 1, 2007 for certificates in childhood education and February 1, 2009 for all other certificates in the classroom teaching service. These dates were ultimately extended, resulting in a continuation of individual evaluation for all certificate titles except for Early Childhood, Generalist in Middle Childhood Education, ELA, and Literacy.

The Department has been contacted by numerous districts in different areas of New York State that have indicated that they are having difficulty finding qualified teachers in certain certificate areas. To help address the reported teacher shortages in New York State, the Department is proposing to reinstate individual evaluation for the following certificate titles: Early Childhood Education (Birth-Grade 2), Childhood Education (Grades 1-6), Generalist in Middle Childhood Education (Grades 5-9), English Language Arts (Grades 5-9 and Grades 7-12), and Literacy (Birth-Grade 6 and Grades 5-12). The proposed change will allow qualified candidates to become certified in these areas, creating larger pools of qualified teachers for school district hiring.

3. COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

The Department believes that uniform standards for certification must be established across the State. Therefore, no alternatives were considered for those located in rural areas of the State.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed amendments to Sections 80-3.3 and 80-3.7 of the Regulations of the Commissioner of Educations is to reinstate individual evaluation for certain certificate titles in the classroom teaching service as a pathway for certification.

The Department has been contacted by numerous districts in different areas of New York State that have indicated that they are having difficulty finding qualified teachers in certain certificate areas. To help address the reported teacher shortages in New York State, the Department is proposing to reinstate individual evaluation for the following certificate titles: Early Childhood Education (Birth-Grade 2), Childhood Education (Grades 1-6), Generalist in Middle Childhood Education (Grades 5-9), English Language Arts (Grades 5-9 and Grades 7-12), and Literacy (Birth-Grade 6 and Grades 5-12). The proposed change will allow qualified candidates to become certified in these areas, creating larger pools of qualified teachers for school district hiring.

Because it is evident from the nature of the proposed amendments that they will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Operation of Licensed Private Career Schools

I.D. No. EDU-17-18-00007-P

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

Proposed Action: Amendment of Part 126 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 5001 through 5010

Subject: Operation of Licensed Private Career Schools.

Purpose: To make technical amendment to Part 126 to implement the law and to conform to current practice.

Text of proposed rule: 1. Subdivision (k) is added to Part 126.10 of the Commissioner's Regulations as follows:

(k) Alternate licensing requirements for non-profit licensed careers schools that are exempt from taxation and whose programs are funded exclusively through donations. Pursuant to Education Law § 5001(4)(f)(3), non-profit licensed career schools that are exempt from taxation under section 501(c)(3) of the Internal Revenue Code and whose programs, including registration fees, the sale of books, supplies, services, kits, uniforms or equipment are funded entirely through donations, exclusive of public sources, from individuals or philanthropic organizations, or endowments, and interest accrued thereon, shall be subject to all of the requirements of article 101 of Education Law and this Part, except that:

(1) such schools shall be exempt from the following requirements of Education Law:

(i) Education § 5002(3), relating to tuition liability;

(ii) Education Law § 5001(4)(e)(i), relating to the inclusion in financial statements of refunds due and owing to past or presently enrolled students;

(iii) Education Law § 5002(2)(b)(5), relating to the inclusion in any school record of the amount of any refund paid to any student;

(iv) Education Law § 5005(a)(4), relating to disclosure to prospective and enrolled students of any refund policy;

(v) Education Law §§ 5005(e) and 5005(f), relating to a tuition reimbursement fund claim form.

(2) Such schools shall also be exempt from the following requirements of this Part:

(i) section 126.4(c)(6), relating to data required to be submitted about tuition and other charges and method of payment;

(ii) sections 126.7(b)(6) through (9), relating to the inclusion in enrollment agreements of any tuition charges or fees or method of payment;

(iii) section 126.7(b)(15), relating to any refund a school will make under certain prescribed circumstances;

(iv) section 126.7(d), except section 126.7(d)(3) thereof, relating to the inclusion in enrollment agreements of a reasonable adjustment of tuition and other fees, and any refund policies;

(v) section 126.7(e), relating to the option to use the refund policy of a nationally recognized accrediting agency and the use of the refund policy required by federal law;

(vi) section 126.7(g), relating to when refunds must be paid to students who withdraw, cancel, or are discontinued;

(vii) section 126.9(a)(8), relating to the inclusion in the school catalog of a schedule of fees or charges;

(viii) section 126.9(a)(9), relating to the inclusion in the school catalog of school policies and regulations governing the refund of any unused portion of tuition, fees and other charges in certain circumstances;

(ix) section 126.9(a)(13)(i), relating to state and federal financial aid only, except that any private grant, scholarship, or other financial assistance offered to students by the school, which shall not expose the student to any tuition liability, shall be included in such school's catalog;

(x) section 126.9(a)(13)(ii)(d), relating to the terms and expected schedules of repayment of any loan received by the student as a part of the student's financial aid;

(xi) section 126.9(a)(18), relating to the inclusion in the school catalog of information about tuition refunds from the Tuition Reimbursement Account (TRA);

(xii) section 126.9(a)(19), relating to the inclusion in the school catalog of requirement to include a weekly tuition liability chart for each program that indicates the amount of refund due the student in the event of a withdraw; and

(xiii) section 126.11(a)(10), relating to the maintenance of records of tuition, fees, public loans and grants, and their disbursement, by a school for seven years.

2. Subdivision (a) of section 126.6 of the Commissioner's Regulations shall be amended to read as follows:

(a) Each applicant shall submit, in a format specified by the commissioner, such data concerning the education, training, experience and other qualifications, including supporting documentation, of the administrative, supervisory and instructional staff of the school as the commissioner may require. Upon submission of an application for a director, the owner shall attest to the applicant's ability to comply with the provisions of this section. Pursuant to section 5002(6) of the Education Law, all applications for teachers and directors shall be mailed or submitted electronically to the commissioner four days prior to employment at the school, and must be completed, with all supporting materials and fees required for evaluation of the file, within 20 days thereafter. However, the commissioner, for good cause shown, may extend the time within which to complete the application. When a complete application is made, the commissioner shall act upon such application within 30 days. If no written denial is made within 30 days, the application shall be deemed to be approved until the commissioner acts upon it or until the end of the term or semester, whichever occurs first. If a written denial is made after the 30-day period, the commissioner may allow the applicant to teach at the school for the remainder of the term or semester if the commissioner determines that the removal of the teacher would not be in the best interest of students. If a teacher or director application, submitted to the department *is mailed* and postmarked*, or electronically submitted* less than four days prior to the employment of such individual, is evaluated and is subsequently determined that the applicant is not qualified pursuant to the provisions of this section, the school may be subject to disciplinary action pursuant to section 5003 of the Education Law, if such conduct constitutes a pattern of abuse. As used in this subdivision, a pattern of abuse is defined as violations which occur three or more times in a 12-month period.

3. Subdivision (f) of section 126.7 of the Commissioner's regulations is amended, to read as follows:

(f) If a transcript*, diploma, certificate, or other document evidencing satisfactory program or course completion* is to be withheld until all fees and charges have been met, the enrollment agreement must so state*, and such documents may then be withheld except as otherwise provided by law*.

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

Data, views or arguments may be submitted to: Michele Wood, NYS Education Department, ACCES VR, 89 Washington Avenue, 575 EBA, Albany, NY 12234, (518) 474-2714, email: accesdeputy@nysed.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Education Law 5001 through 5010 establish the licensing requirements and exemptions for licensed private career schools.

2. LEGISLATIVE OBJECTIVES:

The purpose of the proposed amendment to establish to establish alternative licensing procedures for non-profit licensed career schools that are exempt from taxations and whose programs are funded exclusively through donations; to allow for electronic submissions of enrollment agreements to all allow for electronic submissions to adjust for technological advancements since the statute was originally enacted and to make a technical correction to allow a licensed private career school to include as part of its enrollment agreement the ability to withhold a diploma, certificate, or other document evidencing satisfactory program or course completion.

3. NEEDS AND BENEFITS:

The Bureau of Proprietary School Supervision (BPSS) oversees and monitors non-degree granting proprietary schools in New York State. BPSS's mission is to ensure that the overall educational quality of the programs offered will provide students with the necessary skills to secure meaningful employment and to protect students' financial interests while attending proprietary schools. BPSS licenses/registers proprietary schools and credentials proprietary school teachers to ensure that appropriate standards are met. BPSS investigates student complaints and conducts comprehensive investigations of schools to ensure compliance with Education Law (§ 5001 - § 5010) and Commissioner's Regulations (8 CRR-NY Part 126).

During 2017, BPSS undertook a review of the regulations and policy guidelines which govern the application of the Education Law to the operation of Licensed Private Career Schools and English as a Second Language ("ESL") Schools. BPSS has created or revised eighteen Policy Guidelines during this time and found several areas of the Commissioner's Regulations that need to be clarified for their application to the operation of licensed schools.

The proposed amendment makes the following technical amendments to Part 126 of the Commissioner's regulations.

- Adds a new subdivision (k) to section 126.10 of the Commissioner's

regulations to implement Education Law section 5001(4)(f)(3) to establish alternative licensing procedures for non-profit licensed career schools that are exempt from taxations and whose programs are funded exclusively through donations

• Amends section 126.6 of the Commissioner's regulations to make a technical correction to allow for electronic submissions due to technological advancements since the statute was originally enacted

• Amends section 126.7 of the Commissioner's regulations to make a technical correction to allow a licensed private career school to include as part of its enrollment agreement the ability to withhold a diploma, certificate, or other document evidencing satisfactory program or course completion

4. COSTS:

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

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

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment does not impose any additional paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted as a permanent rule by the Board of Regents at its July 2018 meeting following the 60-day public comment period required under the State Administrative Procedure act. If adopted at the July 2018 meeting, the proposed amendment will become effective as a permanent rule on August 1, 2018.

Regulatory Flexibility Analysis

(a) Local governments:

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

(b) Small businesses:

1. EFFECT OF RULE:

The Bureau of Proprietary School Supervision estimates that there are hundreds of private licensed career schools and English as a second language schools operating as small businesses with fewer than 100 employees in this State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment makes the following technical amendments to Part 126 of the Commissioner's regulations.

• Adds a new subdivision (k) to section 126.10 of the Commissioner's regulations to implement Education Law section 5001(4)(f)(3) to establish alternative licensing procedures for non-profit licensed career schools that are exempt from taxations and whose programs are funded exclusively through donations

• Amends section 126.6 of the Commissioner's regulations to make a technical correction to allow for electronic submissions due to technological advancements since the statute was originally enacted

• Amends section 126.7 of the Commissioner's regulations to make a technical correction to allow a licensed private career school to include as part of its enrollment agreement the ability to withhold a diploma, certificate, or other document evidencing satisfactory program or course completion

3. PROFESSIONAL SERVICES:

No professional services are needed to comply with the proposed amendment.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional compliance costs on licensed private career schools or English as a second language schools.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements on any regulated parties.

6. MINIMIZING ADVERSE IMPACT:

In an effort to have uniform standards for all licensed private career schools across the State, no alternatives were considered.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from licensed private career schools and private career school associations through the offices of the Bureau of Proprietary School Supervision.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

This proposed amendment applies to all individuals in New York State pursuing a certificate in the classroom teaching service, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The Bureau of Proprietary School Supervision (BPSS) oversees and monitors non-degree granting proprietary schools in New York State. BPSS's mission is to ensure that the overall educational quality of the programs offered will provide students with the necessary skills to secure meaningful employment and to protect students' financial interests while attending proprietary schools. BPSS licenses/registers proprietary schools and credentials proprietary school teachers to ensure that appropriate standards are met. BPSS investigates student complaints and conducts comprehensive investigations of schools to ensure compliance with Education Law (§ 5001 - § 5010) and Commissioner's Regulations (8 CRR-NY Part 126).

During 2017, BPSS undertook a review of the regulations and policy guidelines which govern the application of the Education Law to the operation of Licensed Private Career Schools and English as a Second Language ("ESL") Schools. BPSS has created or revised eighteen Policy Guidelines during this time and found several areas of the Commissioner's Regulations that need to be clarified for their application to the operation of licensed schools.

The proposed amendment makes the following technical amendments to Part 126 of the Commissioner's regulations:

• Adds a new subdivision (k) to section 126.10 of the Commissioner's regulations to implement Education Law section 5001(4)(f)(3) to establish alternative licensing procedures for non-profit licensed career schools that are exempt from taxations and whose programs are funded exclusively through donations

• Amends section 126.6 of the Commissioner's regulations to make a technical correction to allow for electronic submissions due to technological advancements since the statute was originally enacted

• Amends section 126.7 of the Commissioner's regulations to make a technical correction to allow a licensed private career school to include as part of its enrollment agreement the ability to withhold a diploma, certificate, or other document evidencing satisfactory program or course completion

3. COSTS:

The proposed amendment does not impose any costs on regulated parties.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment creates no adverse impact.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The proposed amendment makes the following technical amendments to Part 126 of the Commissioner's regulations:

• Adds a new subdivision (k) to section 126.10 of the Commissioner's regulations to implement Education Law section 5001(4)(f)(3) to establish alternative licensing procedures for non-profit licensed career schools that are exempt from taxations and whose programs are funded exclusively through donations

• Amends section 126.6 of the Commissioner's regulations to make a technical correction to allow for electronic submissions due to technological advancements since the statute was originally enacted

• Amends section 126.7 of the Commissioner's regulations to make a technical correction to allow a licensed private career school to include as part of its enrollment agreement the ability to withhold a diploma, certificate, or other document evidencing satisfactory program or course completion

Because it is evident from the nature of the proposed amendments that they will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken.

During 2017, BPSS undertook a review of the regulations and policy guidelines which govern the application of the Education Law to the opera-

tion of Licensed Private Career Schools and English as a Second Language ("ESL") Schools. BPSS has created or revised eighteen Policy Guidelines during this time and found several areas of the Commissioner's Regulations that need to be clarified for their application to the operation of licensed schools.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Teacher Certification Requirements for Teachers Who Hold SWD Generalist (7-12) Certificate and Teach in a Special Class

I.D. No. EDU-17-18-00008-P

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

Proposed Action: Amendment of section 80-4.3; and addition of section 80-3.15 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 210, 215, 305, 3001, 3004 and 3009

Subject: Teacher certification requirements for teachers who hold SWD generalist (7-12) certificate and teach in a special class.

Purpose: To create limited extensions for teachers holding a students with disabilities generalist certificate who teach a special class in grades 7-12 and a statement of continued eligibility for teachers holding a students with disabilities generalist certificate who teach a special class in grades 7-12 and were previously allowed to teach in another content area by school districts using the housse rubric for Federal aid purposes under the No Child Left Behind Act.

Text of proposed rule: 1. A new section 80-3.15 shall be added to the Regulations of the Commissioner of Education to read as follows:

§ 80-3.15 Statement of continued eligibility for teachers of students with disabilities who teach a special class in grades 7-12.

(a) Upon application, a person who meets the requirements of this section and is employed in a public school or other school for which teacher certification is required to teach a special class, as defined in section 200.1(uu) of this Title, may be issued a statement of continued eligibility pursuant to which such person may teach one or more of the following subject areas in a special class without a teaching certificate in these areas as is required under this Part: biology, chemistry, earth science, English Language Arts, mathematics, physics, and social studies; provided that such person holds a valid initial or professional certificate in the classroom teaching service in students with disabilities generalist (grades 7-12) and meets the requirements of this section for each subject area for which the person is seeking a statement of continued eligibility.

(b) A statement of continued eligibility must be obtained for each subject area the teacher seeks to teach without certification in the special class.

(c) The statement of continued eligibility shall be valid for service in any district and shall be continuously valid provided that the person holds a valid initial or professional certificate in students with disabilities generalist (grades 7-12) and is teaching in a special class, as defined in section 200.1(uu) of this Title.

(d) Applications for the statement of continued eligibility shall be submitted to the Department, on a form prescribed by the Commissioner, on or before July 1, 2019 and candidates must meet the requirements in the following subparagraph to be issued a statement of continued eligibility for each subject area in which the statement of continued eligibility is sought prior to July 1, 2019:

(1) As part of the application, the candidate shall submit satisfactory evidence of at least three years of satisfactory full-time teaching experience prior to July 1, 2019, during which time the candidate met the qualifications to be considered highly qualified for a core academic subject for purposes of the No Child Left Behind Act (NCLB) under the former 34 C.F.R. 200.56 through passing the high objective uniform State standard of evaluation rubric (HOUSSE) to demonstrate subject matter competency in grades 7-12 in the subject area in which the statement of continued eligibility sought. The candidate shall submit, as part of the application, the completed HOUSSE rubric from the district(s) for each year of experience for each subject area that the candidate seeks a statement of continued eligibility.

2. A new subdivision (t) shall be added to Section 80-4.3 of the Regulations of the Commissioner of Education to read as follows:

(t) Requirements for the issuance of a limited extension to teach a specific subject in a special class in grades 7-12.

(1) Purpose. The purpose of limited extensions issued under this subdivision is to authorize a teacher who holds a valid initial or professional certificate in the classroom teaching service in students with disabilities generalist (grades 7-12) to teach one of the following subject areas in a special class as defined in section 200.1(uu) of this Tile: biology, chemistry, earth science, English Language Arts, mathematics, physics, and social studies.

(2) Limitations. A limited extension in a specific subject area issued under this subdivision shall be valid for five years from its effective date and may be renewed once for an additional five years if the candidate has completed at least three semester hours of coursework in the subject area of the limited extension sought prior to the expiration date of the first issuance of the limited extension. Candidates may apply for multiple limited extension(s) in different subject area(s).

(3) Requirements for a limited extension. A limited extension may be issued to a candidate in a specific subject area provided that the candidate holds a valid initial or professional certificate in the classroom teaching service in students with disabilities generalist (grades 7-12) and meets the requirements in one of the following subparagraphs:

(i) The candidate shall submit evidence of having at least two years of satisfactory full-time teaching experience in a public school, State-supported or State-operated school, or private schools established under 853 of the Laws of 1976 prior to July 1, 2019 during which time the candidate met the qualifications to be considered highly qualified for a core academic subject for purposes of the No Child Left Behind Act under the former 34 C.F.R. 200.56 through passing the high, objective, uniform State standard of evaluation rubric (HOUSSE) to demonstrate subject matter competency in grades 7-12 in the subject area for which the limited extension was sought. The candidate shall submit, as part of the application, the completed HOUSSE rubric from the district(s) for each year of experience for each subject area that the candidate seeks a limited extension.

(ii) Submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination content specialty test in the subject area in which the limited extension is sought.

(iii) Receive a satisfactory passing score on an industry accepted examination that demonstrates mastery in the subject area for which the limited extension is sought or in a closely related area that is approved by the department through a request for qualifications process.

(iv) Complete at least nine semester hours of coursework in the subject area in which the limited extension is sought.

(v) Provide satisfactory evidence of completion of at least 45 hours of acceptable continuing teacher and leader education focused in the subject area in which the limited extension is sought and provide satisfactory evidence of either (a) or (b):

(a) at least two years of satisfactory teaching experience in grades 7-12 in the subject area in which the limited extension is sought or in a closely related subject area acceptable to the department; or

(b) an employment and support commitment from a public school district or a State-supported or State-operated school or private school established under 853 of the Laws of 1976 for the teacher to be employed in a special class as defined in section 200.1(uu) for the period of the limited extension that shall include a plan from the school or school district for mentoring and appropriate instructional support from a teacher in the school or school district who holds a professional or permanent certificate and is certified in the subject area in which the limited extension is sought. Mentoring shall include regular, ongoing collaboration between the teachers and types of mentoring activities may include, but are not limited to, modeling instruction, observing instruction, instructional co-planning, peer coaching, and team coaching.

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

Data, views or arguments may be submitted to: Rebecca Coyle, NYS Department of Education, Office of Higher Education, 89 Washington Avenue, Room 975 EBA, Albany, NY 12234, (518) 486-3633, email: regcomments@nysed.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Education Law 210 (not subdivided) authorizes the Regents to register domestic and foreign institutions in terms of New York standards.

Education Law 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies. Section 305(2) provides the Commissioner with general supervi-

sion over schools and authority to advise and guide school district officers in their duties and the general management of their schools.

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

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

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

2. LEGISLATIVE OBJECTIVES:

The purpose of the proposed amendments to sections 80-3.15 and 80-4.3 of the Regulations of the Commissioner of Education are to create limited extensions for teachers holding a students with disabilities generalist certificate who teach a special class in grades 7-12 and a statement of continued eligibility for teachers holding a students with disabilities generalist certificate who teach a special class in grades 7-12 and were previously allowed to teach in another content area by school districts using the High Objective Uniform State Standard of Evaluation (HOUSSE) Rubric for federal aid purposes under the No Child Left Behind Act.

3. NEEDS AND BENEFITS:

The Every Student Succeeds Act (ESSA) eliminated the No Child Left Behind (NCLB) Act of 2001 requirement that teachers be "Highly Qualified" in the area of their teaching assignment in order for local educational agencies (LEA) to receive certain federal aid. However, the Department is still required to ensure that educators in LEAs receiving federal funding fulfill state certification requirements.

NCLB required local educational agencies to provide a teacher of core academic subjects who is not new to the profession the opportunity to meet the NCLB requirement to be Highly Qualified, in part, through passing a "High, Objective, Uniform State Standard of Evaluation" (HOUSSE). The Department developed a HOUSSE rubric (see Attachment A) for practicing teachers in New York State that listed different ways in which teachers could demonstrate Highly Qualified status in the area of their teaching assignment. Compliance with the HOUSSE requirements did not lead to teacher certification; it only led to Highly Qualified status for federal aid purposes.

The Department has become aware that some school districts have been using the HOUSSE rubric to ensure that teachers of students with disabilities in grades 7-12 who teach special classes comprised of students with disabilities can teach at least one subject area in these special classes (e.g., English language Arts (ELA), mathematics, science, and/or social studies) so that separate content teachers are not needed for each subject area. The Department also recognizes that there is a shortage of teachers of students with disabilities in grades 7-12 who also hold the subject area certificates needed to teach the core subject areas of ELA, mathematics, science, and/or social studies in special classes.

Providing pathways to subject area certification for teachers of students with disabilities in grades 7-12 who are assigned to teach special classes, but do not hold the appropriate subject area certificates, would both help to address this shortage and ensure that these teachers know the content that they are teaching.

Proposed Amendment

New York State holds high standards for public school teachers by requiring them to be certified in the area of their teaching assignment. The Department is proposing the following options for teachers who hold the students with disabilities generalist in grades 7-12 certificate and are assigned to teach special classes, but do not hold the appropriate subject area certificate(s):

Option 1. The statement of continued eligibility (SOCE) would be available in the areas of biology, chemistry, earth science, ELA, mathematics, physics, and social studies. Teachers who hold a students with disabilities generalist certificate in grades 7-12, have been assigned to teach a special class, and have at least three years of satisfactory full-time teaching experience in grades 7-12 on or before July 1, 2019, during which time they were considered Highly Qualified by a school district in one or more subject areas through the HOUSSE rubric, would be certified in those subject area(s) through the SOCE. To receive the SOCE in one or more subject areas, teachers must complete the required teaching experience prior to July 1, 2019.

Option 2. The limited extension would be available for teachers who hold a student with disabilities generalist certificate in grades 7-12 who have been assigned to teach a special class, but do not qualify for the SOCE. The limited extension would enable these teachers to become certified for a limited time in one or more specific subject areas while they complete the additional coursework (up to 18 semester hours) required for certification in the subject areas of biology, chemistry, earth science, ELA, mathematics, physics, and social studies.

Limited Extension

Given the expectations and backgrounds of teachers of students with disabilities in grades 7-12 who teach a special class, the limited extension in a specific subject area would be valid for five years and may be renewed once for an additional five years if the teachers complete at least three semester hours of coursework in the subject area of the limited extension. This ten-year time period gives teachers flexibility to complete the coursework requirements for multiple subject area certificate extensions.

Teachers of students with disabilities in grades 7-12 who teach a special class could gain a limited extension in a subject by demonstrating their content knowledge through one of the following requirements:

- having at least two years of satisfactory full-time teaching experience with students with disabilities in grades 7-12 during which time they hold a valid Initial or Professional certificate in the classroom teaching service in students with disabilities generalist (grades 7-12) and who were previously considered Highly Qualified by a district in the subject area using the HOUSSE rubric for NCLB purposes prior to July 1, 2019; or
- passing the New York State Teacher Certification Examination Content Specialty Test in the subject area; or
- passing an industry accepted exam in the subject area; or
- completing at least 9 semester hours of coursework in the subject area, including any coursework completed during a teacher preparation program; or
- completing at least 45 hours of acceptable Continuing Teacher and Leader Education (CTLE) in the subject area and either: 1) having at least two years of satisfactory full-time teaching experience with students with disabilities in grades 7-12 in the subject area, or 2) being mentored for at least one year by a teacher in the school or school district who holds a professional or permanent certificate in the subject area.

Certification

Teachers who hold a students with disabilities generalist certificate in grades 7-12 who teach a special class are likely to teach multiple subject areas. They typically already possess one subject area certificate based on the completion of their preparation program and often have earned at least 6 semester hours in each subject area during their preparation program. This leaves them needing an additional 12 semester hours of coursework to earn the total 18 semester hours required for certification in each additional subject area.

4. COSTS:

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

b. Costs to local government: The amendments do not impose any costs on local government.

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed amendment does not impose any additional paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted as a permanent rule by the Board of Regents at its July 2018 meeting. If adopted at the July 2018 meeting, the proposed amendment will become effective on August 1, 2018.

Regulatory Flexibility Analysis

(a) Small Businesses:

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

(b) Local Governments:

1. EFFECT OF RULE:

The proposed amendment creates limited extensions for teachers holding a students with disabilities generalist teaching certificate who teach a special class in grades 7-12 and a statement of continued eligibility for teachers holding a students with disabilities generalist teaching certificate who teach a special class in grades 7-12 and were previously allowed to teach in another content area by school districts using the High, Objective, Uniform State Standard of Evaluation (HOUSSE) Rubric under the No Child Left Behind Act.

2. COMPLIANCE REQUIREMENTS:

The Every Student Succeeds Act (ESSA) eliminated the No Child Left Behind (NCLB) Act of 2001 requirement that teachers be "Highly Qualified" in the area of their teaching assignment in order for local educational agencies (LEA) to receive certain federal aid. However, the Department is still required to ensure that educators in LEAs receiving federal funding fulfill state certification requirements.

NCLB required local educational agencies to provide a teacher of core academic subjects who is not new to the profession the opportunity to meet the NCLB requirement to be Highly Qualified, in part, through passing a "High, Objective, Uniform State Standard of Evaluation" (HOUSSE). The Department developed a HOUSSE rubric (see Attachment A) for practicing teachers in New York State that listed different ways in which teachers could demonstrate Highly Qualified status in the area of their teaching assignment. Compliance with the HOUSSE requirements did not lead to teacher certification; it only led to Highly Qualified status for federal aid purposes.

The Department has become aware that some school districts have been using the HOUSSE rubric to ensure that teachers of students with disabilities in grades 7-12 who teach special classes comprised of students with disabilities can teach at least one subject area in these special classes (e.g., English language Arts (ELA), mathematics, science, and/or social studies) so that separate content teachers are not needed for each subject area. The Department also recognizes that there is a shortage of teachers of students with disabilities in grades 7-12 who also hold the subject area certificates needed to teach the core subject areas of ELA, mathematics, science, and/or social studies in special classes.

Providing pathways to subject area certification for teachers of students with disabilities in grades 7-12 who are assigned to teach special classes, but do not hold the appropriate subject area certificates, would both help to address this shortage and ensure that these teachers know the content that they are teaching.

Proposed Amendment

New York State holds high standards for public school teachers by requiring them to be certified in the area of their teaching assignment. The Department is proposing the following options for teachers who hold the students with disabilities generalist in grades 7-12 certificate and are assigned to teach special classes, but do not hold the appropriate subject area certificate(s):

Option 1. The statement of continued eligibility (SOCE) would be available in the areas of biology, chemistry, earth science, ELA, mathematics, physics, and social studies. Teachers who hold a students with disabilities generalist certificate in grades 7-12, have been assigned to teach a special class, and have at least three years of satisfactory full-time teaching experience in grades 7-12 on or before July 1, 2019, during which time they were considered Highly Qualified by a school district in one or more subject areas through the HOUSSE rubric, would be certified in those subject area(s) through the SOCE. To receive the SOCE in one or more subject areas, teachers must complete the required teaching experience prior to July 1, 2019.

Option 2. The limited extension would be available for teachers who hold a student with disabilities generalist certificate in grades 7-12 who have been assigned to teach a special class, but do not qualify for the SOCE. The limited extension would enable these teachers to become certified for a limited time in one or more specific subject areas while they complete the additional coursework (up to 18 semester hours) required for certification in the subject areas of biology, chemistry, earth science, ELA, mathematics, physics, and social studies.

Limited Extension

Given the expectations and backgrounds of teachers of students with disabilities in grades 7-12 who teach a special class, the limited extension in a specific subject area would be valid for five years and may be renewed once for an additional five years if the teachers complete at least three semester hours of coursework in the subject area of the limited extension. This ten-year time period gives teachers flexibility to complete the coursework requirements for multiple subject area certificate extensions.

Teachers of students with disabilities in grades 7-12 who teach a special class could gain a limited extension in a subject by demonstrating their content knowledge through one of the following requirements:

- having at least two years of satisfactory full-time teaching experience with students with disabilities in grades 7-12 during which time they hold a valid Initial or Professional certificate in the classroom teaching service in students with disabilities generalist (grades 7-12) and who were previously considered Highly Qualified by a district in the subject area using the HOUSSE rubric for NCLB purposes prior to July 1, 2019; or
- passing the New York State Teacher Certification Examination Content Specialty Test in the subject area; or
- passing an industry accepted exam in the subject area; or
- completing at least 9 semester hours of coursework in the subject area, including any coursework completed during a teacher preparation program; or
- completing at least 45 hours of acceptable Continuing Teacher and Leader Education (CTLE) in the subject area and either: 1) having at least two years of satisfactory full-time teaching experience with students with disabilities in grades 7-12 in the subject area, or 2) being mentored for at least one year by a teacher in the school or school district who holds a professional or permanent certificate in the subject area.

Certification

Teachers who hold a students with disabilities generalist certificate in grades 7-12 who teach a special class are likely to teach multiple subject areas. They typically already possess one subject area certificate based on the completion of their preparation program and often have earned at least 6 semester hours in each subject area during their preparation program. This leaves them needing an additional 12 semester hours of coursework to earn the total 18 semester hours required for certification in each additional subject area.

3. PROFESSIONAL SERVICES:

No professional services are needed to comply with the proposed amendment.

4. COMPLIANCE COSTS:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

In an effort to have uniform certification standards across the State, no alternatives were considered.

7. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

This proposed amendment applies to all teachers holding a students with disabilities generalist certificate in grades 7-12 who teach a special class in New York State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The Every Student Succeeds Act (ESSA) eliminated the No Child Left Behind (NCLB) Act of 2001 requirement that teachers be "Highly Qualified" in the area of their teaching assignment in order for local educational agencies (LEA) to receive certain federal aid. However, the Department is still required to ensure that educators in LEAs receiving federal funding fulfill state certification requirements.

NCLB required local educational agencies to provide a teacher of core academic subjects who is not new to the profession the opportunity to meet the NCLB requirement to be Highly Qualified, in part, through passing a "High, Objective, Uniform State Standard of Evaluation" (HOUSSE). The Department developed a HOUSSE rubric (see Attachment A) for practicing teachers in New York State that listed different ways in which teachers could demonstrate Highly Qualified status in the area of their teaching assignment. Compliance with the HOUSSE requirements did not lead to teacher certification; it only led to Highly Qualified status for federal aid purposes.

The Department has become aware that some school districts have been using the HOUSSE rubric to ensure that teachers of students with disabilities in grades 7-12 who teach special classes comprised of students with disabilities can teach at least one subject area in these special classes (e.g., English language Arts (ELA), mathematics, science, and/or social studies) so that separate content teachers are not needed for each subject area. The Department also recognizes that there is a shortage of teachers of students with disabilities in grades 7-12 who also hold the subject area certificates needed to teach the core subject areas of ELA, mathematics, science, and/or social studies in special classes.

Providing pathways to subject area certification for teachers of students with disabilities in grades 7-12 who are assigned to teach special classes, but do not hold the appropriate subject area certificates, would both help to address this shortage and ensure that these teachers know the content that they are teaching.

Proposed Amendment

New York State holds high standards for public school teachers by requiring them to be certified in the area of their teaching assignment. The Department is proposing the following options for teachers who hold the students with disabilities generalist in grades 7-12 certificate and are assigned to teach special classes, but do not hold the appropriate subject area certificate(s):

Option 1. The statement of continued eligibility (SOCE) would be avail-

able in the areas of biology, chemistry, earth science, ELA, mathematics, physics, and social studies. Teachers who hold a students with disabilities generalist certificate in grades 7-12, have been assigned to teach a special class, and have at least three years of satisfactory full-time teaching experience in grades 7-12 on or before July 1, 2019, during which time they were considered Highly Qualified by a school district in one or more subject areas through the HOUSSE rubric, would be certified in those subject area(s) through the SOCE. To receive the SOCE in one or more subject areas, teachers must complete the required teaching experience prior to July 1, 2019.

Option 2. The limited extension would be available for teachers who hold a student with disabilities generalist certificate in grades 7-12 who have been assigned to teach a special class, but do not qualify for the SOCE. The limited extension would enable these teachers to become certified for a limited time in one or more specific subject areas while they complete the additional coursework (up to 18 semester hours) required for certification in the subject areas of biology, chemistry, earth science, ELA, mathematics, physics, and social studies.

Limited Extension

Given the expectations and backgrounds of teachers of students with disabilities in grades 7-12 who teach a special class, the limited extension in a specific subject area would be valid for five years and may be renewed once for an additional five years if the teachers complete at least three semester hours of coursework in the subject area of the limited extension. This ten-year time period gives teachers flexibility to complete the coursework requirements for multiple subject area certificate extensions.

Teachers of students with disabilities in grades 7-12 who teach a special class could gain a limited extension in a subject by demonstrating their content knowledge through one of the following requirements:

- having at least two years of satisfactory full-time teaching experience with students with disabilities in grades 7-12 during which time they hold a valid Initial or Professional certificate in the classroom teaching service in students with disabilities generalist (grades 7-12) and who were previously considered Highly Qualified by a district in the subject area using the HOUSSE rubric for NCLB purposes prior to July 1, 2019; or
- passing the New York State Teacher Certification Examination Content Specialty Test in the subject area; or
- passing an industry accepted exam in the subject area; or
- completing at least 9 semester hours of coursework in the subject area, including any coursework completed during a teacher preparation program; or
- completing at least 45 hours of acceptable Continuing Teacher and Leader Education (CTLE) in the subject area and either: 1) having at least two years of satisfactory full-time teaching experience with students with disabilities in grades 7-12 in the subject area, or 2) being mentored for at least one year by a teacher in the school or school district who holds a professional or permanent certificate in the subject area.

Certification

Teachers who hold a students with disabilities generalist certificate in grades 7-12 who teach a special class are likely to teach multiple subject areas. They typically already possess one subject area certificate based on the completion of their preparation program and often have earned at least 6 semester hours in each subject area during their preparation program. This leaves them needing an additional 12 semester hours of coursework to earn the total 18 semester hours required for certification in each additional subject area.

3. COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

The Department believes that uniform standards for certification must be established across the State. Therefore, no alternatives were considered for those located in rural areas of the State.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed amendments to Section 80-3.15 and Section 80-4.3 of the Regulations of the Commissioner of Education is to create limited extensions for teachers holding a students with disabilities generalist certificate who teach a special class in grades 7-12 and a statement of continued eligibility for teachers holding a students with disabilities generalist certificate who teach a special class in grades 7-12 and were previously allowed to teach in another content area by school districts using the High Objective Uniform State Standard of Evaluation (HOUSSE) Rubric for federal aid purposes under the No Child Left Behind Act.

Both provisions are intended to ease the transition for candidates, school districts, and BOCES in terms of job impact and preventing any teacher shortages. Because it is evident from the nature of the proposed amendments that they will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Registration Standards for Libraries and Preservation of Library Research Materials

I.D. No. EDU-17-18-00016-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 90.2 and 90.16 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 215, 305, 254 and 273

Subject: Registration standards for libraries and preservation of library research materials.

Purpose: To clarify terminology relating to registration standards for libraries and to implement Education Law section 273(7).

Text of proposed rule: 1. Section 90.2 of the Regulations of the Commissioner shall be amended, to read as follows:

§ 90.2 Standards for registration of public, free association and Indian libraries.

(a) Registration standards through December 31, 2020. A public, free association or Indian library registered on or before December 31, 2020 shall meet the following registration standards:

(1) is governed by written bylaws which outline the responsibilities and procedures of library board of trustees*;*

(2) has a board-approved, written long-range plan of service;

(3) presents an annual report to the community on the library's progress in meeting its goals and objectives;

(4) has board-approved written policies for the operation of the library;

(5) presents annually to appropriate funding agencies a written budget which would enable the library to meet or exceed these standards and to carry out its long-term plan of service;

(6) periodically evaluates the effectiveness of the library's collections and services in meeting community needs;

(7) is open the following scheduled hours:

Population	Minimum Weekly Hours Open
Up to 500	12
500-2,499	20
2,500-4,999	25
5,000-14,999	35
15,000-24,999	40
25,000-99,999	55
100,000 and above	60

(8) maintains a facility to meet community needs, including adequate space, lighting, shelving, seating, and a restroom;

(9) provides equipment and connections to meet community needs including, but not limited to a telephone, photocopier, telefacsimile capability, and microcomputer or terminal with printer, to provide access to other library catalogs and other electronic information;

(10) distributes printed information listing the library's hours open, borrowing rules, services, location and phone number; *and*

(11) employs a paid director in accordance with the provisions of Section 90.8 of this Part.

(b)[(1) Any public, free association or Indian library registered by the department at the time this section takes effect shall be required to meet the standards for registration in subdivision (a) of this section on the following schedule:

(1) meet the standards of paragraphs (1) through (5) and (10) of subdivision (a) of this section on or before January 1, 1995.

(2) meet the standards of paragraph (6) of subdivision (a) of this section on or before January 1, 1997.

(3) meet the standards of paragraphs (7), (8), (9) and (11) of subdivision (a) of this section on or before January 1, 1999].

Registration standards on or after January 1, 2021. A public, free as-

sociation or Indian library seeking to register with the Department on or after January 1, 2021 shall be registered with the Department if it meets the registration standards set forth in this subdivision in a manner satisfactory to the Commissioner. Any public, free association or Indian library that was registered by the Department on or before December 31, 2020, shall meet the following registration requirements by January 1, 2021 to continue to be registered by the Department:

(1) is governed by written bylaws which define the structure and governing functions of the library board of trustees, and which shall be reviewed and re-approved by the board of trustees at least once every five years or earlier if required by law;

(2) has a community-based, board-approved, written long-range plan of service developed by the library board of trustees and staff;

(3) provides a board-approved written annual report to the community on the library's progress in meeting its mission, goals and objectives, as outlined in the library's long-range plan of service;

(4) has board-approved written policies for the operation of the library, which shall be reviewed and updated at least once every five years or earlier if required by law;

(5) annually prepares and publishes a board-approved, written budget, which enables the library to address the community's needs, as outlined in the library's long-range plan of service;

(6) periodically evaluates the effectiveness of the library's programs, services and collections to address community needs, as outlined in the library's long-range plan of service;

(7) is open the following scheduled hours:

Population	*Minimum Weekly Hours Open*
Up to 500	*12*
500-2,499	*20*
2,500-4,999	*25*
5,000-14,999	*35*
15,000-24,999	*40*
25,000-99,999	*55*
100,000 and above	*60*

(8) maintains a facility that addresses community needs, as outlined in the library's long-range plan of service, including adequate space, lighting, shelving, seating, power and data infrastructure, and a public restroom;

(9) provides programming to address community needs, as outlined in the library's long-range plan of service;

(10) provides a circulation system that facilitates access to the local library collection and other library catalogs; and provides equipment, technology, and internet connectivity to address community needs and facilitate access to information;

(11) provides access to current library information in print and online, facilitating the understanding of library services, operations and governance; information provided online shall include the standards referenced in paragraphs one through five of this subdivision;

(12) employs a paid director in accordance with the provisions of Section 90.8 of this Part;

(13) provides library staff with annual technology training, appropriate to their position, to address community needs, as outlined in the library's long-range plan of service; and

(14) establishes and maintains partnerships with other educational, cultural or community organizations which enable the library to address the community's needs, as outlined in the library's long-range plan of service.

(c) Variances. If circumstances over which any public, free association or Indian library has no control prevent it from meeting one or more of the standards of service set forward in subdivision (a) *or subdivision (b)* of this section, such library may apply for a variance for such standard(s). The application for such variance shall be submitted for such library by the public library system of which such library is a member, in a form prescribed by the commissioner. No variance granted pursuant to this subdivision shall be deemed to relieve a public, free association or Indian library of any obligation imposed by any other provision of federal or state law.

2. Section 90.16 of the Regulations of the Commissioner of Education shall be amended, to read as follows:

§ 90.16 [Grants for conservation] *Conservation* and/or preservation of library research materials.

(a) Definitions. As used in this section and in Education Law, section 273(7):

(1) . . .

(2) Agencies and libraries, as used in Education Law section 273(7)[(d)] *(c)*, means libraries chartered by the Regents or in institutions chartered by the Regents, other than comprehensive research libraries, and other agencies collecting, organizing, maintaining and making available to the people of the State, library research materials as defined in paragraph [(6)] *(4)* of this subdivision.

(3) . . .

[(4) A cooperative program means a program for the conservation and/or preservation of materials operated by a comprehensive research library for the benefit of two or more comprehensive research libraries that involves collective decision making on priorities, avoidance of duplicate effort, use of a national data base to make known decisions on items being preserved, and the dissemination of information resulting from the program.

(5) A cooperative facility for conservation and/or preservation means a comprehensive research library which develops a capacity for serving the conservation and/or preservation needs of one or more of the comprehensive research libraries beyond the immediate needs of the sponsoring institution, including, but not limited to:

(i) reformatting, including microfilming and copying disks to tape;

(ii) major conservation treatment, such as surface cleaning, deacidification, leather repair, and conservation rebinding;

(iii) the hiring of consultants to provide guidance to any or all of the comprehensive research libraries for the development of specific aspects of their conservation and/or preservation programs or for the overall development of their programs; and

(iv) training and education in conservation and/or preservation, including staff training and patron awareness programs.]

[(6)] *(4)* Library research materials means informational materials in print, non-print, manuscript or any other format or medium which are part of the applicant's collections and are, or will be, made available for reference, on-site examination, and or loan.

[(7)] *(5)* Unique library research materials means library research materials which are not accessible to the people of the State in any other collection in the State, or identifiable collections of library research materials, some portions of which may be accessible elsewhere in the State, which have research value not duplicated elsewhere in the State.

(6) Office for coordination of conservation and/or preservation of library research materials means an office within the State Education Department responsible for identifying the conservation and/or preservation needs of libraries within the state as defined in paragraphs (1) and (2) of this subdivision, to assess the technology available for such conservation and preservation, and to coordinate the conservation and preservation efforts resulting from Education Law § 273(7). This office will be located in the New York state library.

(b) . . .

(c) . . .

(d). . .

(e) . . .

(f) Applications and reports.

(1) . . .

[(2) Comprehensive research libraries applying for grants under Education Law section 273 (7)(c) shall submit project proposals in a form prescribed by the department, including, but not limited to, the following elements:

(i) A description of the unique library research materials to be preserved or conserved with grant funds;

(ii) A description of proposed conservation and/or preservation activities, and of the techniques to be employed in such activities;

(iii) A description of staff and/or data about suppliers of contract services which demonstrates appropriate training, experience and expertise for performing the proposed work;

(iv) Evidence of access to appropriate facilities for conservation and/or preservation;

(v) Assurance that bibliographic information in machine readable form will be available on materials preserved;

(vi) Evidence of institutional commitment to development of a coordinated approach to conservation and preservation in the State;

(vii) Institutional contribution to the project in matching funds and staff resources; and

(viii) Provision for use of a national data base to make known to other libraries decisions on items being preserved.]

[(3)] *(2)* Agencies and libraries applying for grants under Education Law section 273(7)[(d)]*(c)* shall submit project proposals in a form prescribed by the department, which shall include, but need not be limited to, the *following* elements [enumerated in paragraph (2) of this subdivision]:

(i) A description of the unique library research materials to be preserved or conserved with grant funds, including the research value of such materials;

(ii) A description of proposed conservation and/or preservation

activities, and of the techniques to be employed in such activities in accordance with statewide planning and national standards;

(iii) A description of staff and/or data about suppliers of contract services which demonstrates appropriate training, availability, experience and expertise for performing the proposed work;

(iv) Evidence of institutional capacity for successful completion of the project, including access to appropriate facilities for conservation and/or preservation;

(v) Assurance that bibliographic information in machine readable form will be available on materials preserved;

(vi) Evidence of institutional commitment to development of a coordinated approach to conservation and preservation in the State;

(vii) Institutional contribution to the project in matching funds and staff resources;

(viii) Provision for use of a national database to make known to other libraries decisions on items being preserved; and

(ix) Data demonstrating the volume of interlibrary lending by the applicant within the State and beyond, and public access to the applicant's holdings.

[(g) Advisory council. The commissioner shall appoint a five-member advisory council to assist in the development and operation of the grant program for conservation and/or preservation of research library materials. Such council shall consist of one member from each of the following;

(1) a comprehensive research library;

(2) an academic library;

(3) a public library;

(4) an historical society, archive, or other repository; and

(5) a person knowledgeable in conservation and/or preservation of library materials.]

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

Data, views or arguments may be submitted to: Bernard A. Margolis, Assistant Commissioner for Libraries, NYS Education Department, Office of Higher Education, Room10C34, New York State Library, Cultural Education Center, Albany, NY 12230, (518) 486-3633, email: regcomments@nysed.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 215 of the Education Law authorizes the Commissioner of Education to visit, examine, and inspect schools or institutions under the education supervision of the State and require reports from such schools.

Section 305 of the Education Law authorizes the Commissioner of Education to enforce all general and special laws regulating to the educational system of the state and execute all educational policies determined upon by the Board of Regents.

Section 254 of the Education Law authorizes the Board of Regents to fix standards of library service for public, free association and Indian libraries.

Section 273(7) of the Education Law provides for a program for the conservation and/or preservation of library research materials.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by updating and clarifying terminology relating to standards for registration of public, free association and Indian libraries and by implementing Education Law § 273(7), as amended by Chapter 362 of the Laws of 2013 relating to the conservation and preservation of library research materials.

3. NEEDS AND BENEFITS:

The proposed amendments to section 90.2 of the Commissioner's regulations, last updated some twenty years ago, are necessary to update and clarify certain terminology related to standards for registration of public, free association and Indian libraries. The amendments include the following major changes:

- Update language in the standards for registration related to library bylaws, a long-range plan, an annual report, the annual budget, and the periodic evaluation of programs, services and collections. Requires library bylaws and written policies to be reviewed and reapproved by the board at least once every five years or earlier if required by law.
- Adds language to clarify that current information about the library, its governance and its services should be available to the community both in print and online.
- Adds language to the existing standard about maintaining a library facility that addresses community needs, to clarify that the restroom should be a public restroom and further clarifies the need for adequate power and data infrastructure.
- Updates current language in the standard related to providing equipment, technology and internet connectivity to address community needs, to include the need for a circulation system that facilitates access to the local library collection and other library catalogs.
- Adds three new standards - one related to library programming, one related to annual technology training for library staff appropriate to their position, and one related to establishing and maintaining partnerships with other education, cultural and community organizations.
- Provides for a two-year implementation period to allow libraries sufficient time to obtain additional resources or expertise that may be needed to achieve compliance by January 1, 2021. Libraries may apply for a variance if circumstances prevent them from meeting one or more of these standards.

The proposed amendment also amends section 90.16 of the Commissioner's regulation to implement Education Law § 273(7), as amended by Chapter 362 of the Laws of 2013 relating to the conservation and preservation of library research materials. The amendments include the following major changes:

- Eliminate outdated language related to a coordinated grant program for the 11 comprehensive research libraries. Chapter 362 of the Laws of 2013 removed the coordinated grant program from the statute effective April 1, 2014.
- Provides a definition of the Office for Coordination of Conservation and/or Preservation of Library Research Materials.
- Eliminates outdated language related to an advisory council for the program.

4. COSTS:

(a) Costs to the State government: The amendment will not impose any additional costs on State government, including the State Education Department.

(b) Costs to local government: The proposed amendment will not impose any additional costs upon local government.

(c) Costs to private, regulated parties: none.

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

5. PAPERWORK:

The proposed amendment does not require any additional paperwork requirements.

6. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not directly impose any additional program, service, duty or responsibility upon local governments. The proposed amendment implements Education Law section 254 and clarifies certain terminology.

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no viable alternatives to the proposed amendment, and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the federal government.

10. COMPLIANCE STANDARDS:

The proposed amendment would take effect on its stated effective date. It is anticipated that the regulated parties would already be in compliance with the amendment on or immediately in following such date. Because of the nature of the proposed amendment, no additional period is needed to enable regulated parties to comply.

Regulatory Flexibility Analysis

(a) Small Businesses:

The purpose of the proposed amendment is to amend sections 90.2 and 90.16 of the Commissioner's regulations to update and clarify terminology relating to standards for registration of public, free Association and Indian libraries and to implement Education Law § 273 (7), as amended by Chapter 362 of the Laws of 2013 relating to the conservation and preservation of library research materials.

The amendment does not impose any reporting, recordkeeping, or compliance requirements on small businesses and will not have an adverse economic impact on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken.

(b) Local Governments:

1. EFFECT OF RULE:

The proposed amendments to section 90.2 apply to some 756 public and association libraries. The proposed amendments to section 90.16 apply to the 11 comprehensive research libraries in the State: Columbia university libraries, Cornell university libraries, the New York State

Library, New York university libraries, university of Rochester libraries, Syracuse university libraries, the research libraries of The New York Public Library, state university of New York at Albany library, state university of New York at Binghamton library, state university of New York at Buffalo library, and state university of New York at Stony Brook library.

2. COMPLIANCE REQUIREMENTS:

The proposed amendments to section 90.2 of the Commissioner's regulations, last updated some twenty years ago, are necessary to update and clarify certain terminology related to standards for registration of public, free association and Indian libraries. The amendments include the following major changes:

• Update language in the standards for registration related to library bylaws, a long-range plan, an annual report, the annual budget, and the periodic evaluation of programs, services and collections. Requires library bylaws and written policies to be reviewed and reapproved by the board at least once every five years or earlier if required by law.

• Adds language to clarify that current information about the library, its governance and its services should be available to the community both in print and online.

• Adds language to the existing standard about maintaining a library facility that addresses community needs, to clarify that the restroom should be a public restroom and further clarifies the need for adequate power and data infrastructure.

• Updates current language in the standard related to providing equipment, technology and internet connectivity to address community needs, to include the need for a circulation system that facilitates access to the local library collection and other library catalogs.

• Adds three new standards - one related to library programming, one related to annual technology training for library staff appropriate to their position, and one related to establishing and maintaining partnerships with other education, cultural and community organizations.

• Provides for a two-year implementation period to allow libraries sufficient time to obtain additional resources or expertise that may be needed to achieve compliance by January 1, 2021. Libraries may apply for a variance if circumstances prevent them from meeting one or more of these standards.

The proposed amendment also amends section 90.16 of the Commissioner's regulation to implement Education Law § 273(7), as amended by Chapter 362 of the Laws of 2013 relating to the conservation and preservation of library research materials. The amendments include the following major changes:

• Eliminate outdated language related to a coordinated grant program for the 11 comprehensive research libraries. Chapter 362 of the Laws of 2013 removed the coordinated grant program from the statute effective April 1, 2014.

• Provides a definition of the Office for Coordination of Conservation and/or Preservation of Library Research Materials.

• Eliminates outdated language related to an advisory council for the program.

3. PROFESSIONAL SERVICES:

The proposed amendment to does not require public and association libraries or the 11 comprehensive research libraries to employ additional professional services in order to comply.

4. COMPLIANCE COSTS:

The amendment will not impose any costs on local governments, including public and association libraries.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements or costs on local governments.

6. MINIMIZING ADVERSE IMPACT:

Because the purpose of the proposed amendment to 90.16 is to implement statutory changes, no alternatives were considered.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule amending 90.2 were solicited from public library system directors, public and association library directors/managers and library boards of trustees in various regions of the State. Comments on the proposed rule amending 90.16 were solicited from the 11 comprehensive research libraries.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendments to section 90.12 apply to approximately 756 public and association libraries. This includes libraries located in the 44 rural counties and 71 towns in urban counties with a population density of 150 per square mile or less.

The proposed amendments to section 90.16 apply to the eleven comprehensive research libraries in the State: Columbia university libraries, Cornell university libraries, the New York State Library, New York university libraries, university of Rochester libraries, Syracuse university libraries, the research libraries of The New York Public Library, state university of New York at Albany library, state university of New York at Binghamton library, state university of New York at Buffalo library, and state university of New York at Stony Brook library.

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

The proposed amendments to section 90.2 of the Commissioner's regulations, last updated some twenty years ago, are necessary to update and clarify certain terminology related to standards for registration of public, free association and Indian libraries. The amendments include the following major changes:

• Update language in the standards for registration related to library bylaws, a long-range plan, an annual report, the annual budget, and the periodic evaluation of programs, services and collections. Requires library bylaws and written policies to be reviewed and reapproved by the board at least once every five years or earlier if required by law.

• Adds language to clarify that current information about the library, its governance and its services should be available to the community both in print and online.

• Adds language to the existing standard about maintaining a library facility that addresses community needs, to clarify that the restroom should be a public restroom and further clarifies the need for adequate power and data infrastructure.

• Updates current language in the standard related to providing equipment, technology and internet connectivity to address community needs, to include the need for a circulation system that facilitates access to the local library collection and other library catalogs.

• Adds three new standards - one related to library programming, one related to annual technology training for library staff appropriate to their position, and one related to establishing and maintaining partnerships with other education, cultural and community organizations.

• Provides for a two-year implementation period to allow libraries sufficient time to obtain additional resources or expertise that may be needed to achieve compliance by January 1, 2021. Libraries may apply for a variance if circumstances prevent them from meeting one or more of these standards.

The proposed amendment also amends section 90.16 of the Commissioner's regulation to implement Education Law § 273(7), as amended by Chapter 362 of the Laws of 2013 relating to the conservation and preservation of library research materials. The amendments include the following major changes:

• Eliminate outdated language related to a coordinated grant program for the 11 comprehensive research libraries. Chapter 362 of the Laws of 2013 removed the coordinated grant program from the statute effective April 1, 2014.

• Provides a definition of the Office for Coordination of Conservation and/or Preservation of Library Research Materials.

• Eliminates outdated language related to an advisory council for the program.

3. COSTS:

The proposed amendment does not impose any additional costs on public and association libraries or comprehensive research libraries located in rural areas.

4. MINIMIZING ADVERSE IMPACT:

Some of the proposed amendments to section 90.2 and 90.16 have been drafted to implement statutory requirements. Moreover, in order to ensure uniform, State-wide standards for public and association libraries, the proposed amendment to section 90.2 applies State-wide.

5. RURAL AREA PARTICIPATION:

The proposed amendment to section 90.2 has been sent for comment to public library system directors, public and association library directors/managers and library boards of trustees, including those in rural areas. The proposed amendment to section 90.16 has been sent for comment to the 11 comprehensive research libraries in various regions of the State, including those in rural areas.

Job Impact Statement

The purpose of the proposed amendment is to update and clarify terminology relating to standards for registration of Public, Free Association and Indian libraries and to implement Education Law § 273 (7), as amended by Chapter 362 of the Laws of 2013 relating to the conservation and preservation of library research materials. Because it is evident from the nature of the proposed rule that it will have no impact on jobs and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

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

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

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

Proposed Action: Amendment of section 80-4.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 210, 215, 305, 3001, 3004 and 3009

Subject: Grade-Level Extensions for Certain Candidates Who Hold a Students with Disabilities Generalist Teaching Certificate.

Purpose: To expand the pool of qualified teachers of students with disabilities by extending the grade levels in which they can teach.

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

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

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

(2) the candidate shall submit satisfactory evidence of at least three school years of teaching experience; provided that at least 75 percent of the candidate's time is spent teaching students with disabilities in grades 1 and/or 2 in public school districts of this State, State-supported or State-operated schools, private schools established under 853 of the Laws of 1976 or BOCES while holding a valid certificate, during each of the three school years; and

(3) the candidate must either:

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

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

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

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

(2) the candidate shall submit satisfactory evidence of at least three school years of teaching experience; provided that at least 75 percent of the candidate's time is spent teaching students with disabilities in grades 1 and/or 2 in public school districts of this State, State-supported or State-operated schools, private schools established under 853 of the Laws of 1976 or BOCES, while holding a valid certificate, during each of the three school years; and

(3) the candidate must either:

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

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

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

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

(2) the candidate shall show satisfactory evidence of a minimum of three school years of teaching experience; provided that at least 75 percent of the candidate's time is spent teaching students with disabilities in grades 5 and/or 6 in the public school districts of this State, State-supported or State-operated schools, private schools established under 853 of the Laws of 1976 or BOCES while holding a valid certificate, during each of the three school years; and

(3) either:

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

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

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

(1) the candidate shall hold a valid initial or professional certificate in students with disabilities (7-12 generalist);

(2) the candidate shall show satisfactory evidence of a minimum of three school years of teaching experience; provided that at least 75 percent of the candidate's time is spent teaching students with disabilities in grades 7 and/or 8 in the public school districts of this State, State-supported or State-operated schools, private schools established under 853 of the Laws of 1976 or BOCES while holding a valid certificate, during each of the three school years; and

(3) either:

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

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

(s) Requirements for a grade-level extension to teach students with disabilities in (grades 10-12). The candidate shall meet the requirements in each of the following paragraphs:

(1) the candidate shall hold a valid initial or professional certificate in students with disabilities (grades 5-9);

(2) the candidate shall submit satisfactory evidence of at least three school years of teaching experience; provided that at least 75 percent of the candidate's time is spent teaching students with disabilities in grades 8 and/or 9 in the public schools of this State, State-supported or State-operated schools, private schools established under 853 of the Laws of 1976 or BOCES, while holding a valid certificate, during each of the three school years; and

(3) the candidate shall:

(i) provide satisfactory evidence of completion of at least 45 hours of acceptable continuing teacher and leader education or a minimum of three semester hours focused on students with disabilities at the adolescent level (grades 10-12); and

(ii) complete at least 15 hours of acceptable continuing teacher and leader education or a minimum of three semester hours focused on English language arts.

Revised rule making(s) were previously published in the State Register on March 28, 2018.

Revised rule compared with proposed rule: Substantial revisions were made in section 80-4.3(s).

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

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

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

Revised Regulatory Impact Statement

Since publication of a Proposed Rule Making in the State Register on December 27, 2017, the following substantial revisions were made to the proposed rule:

Sections 80-4.3(o), (p), (q) and (r) of the Commissioner's regulations were amended to allow candidates seeking a grade level extension under the new regulations to apply satisfactory evidence of at least three years of teaching experience in public school districts of this State, State-supported or State-operated schools, private schools established under 853 of the Laws of 1976 or BOCES, while holding a valid certificate, during each of the three school years; ; provided that at least 75 percent of the candidate's time is spent teaching students with disabilities in grades 1 and/or 2. Previously the proposed amendment only counted teaching experience in public schools.

A new subdivision (s) of the 80-4.3 shall be added to the Commissioner's regulations to create a new Grades 10-12 extension for teachers holding a student with disabilities generalist certificate in grades 5-9. To earn this extension for Grades 10-12, candidates must have a minimum of three years teaching experience at 8th and/or 9th grade levels, complete at least 45 hours of acceptable CTLE or three semester hours of pedagogical coursework focused on adolescent level education, and at least 15 hours of acceptable CTLE or three semester hours in English language arts.

The above revisions require revisions to the Needs and Benefits section in the previously published Regulatory Impact Statement:

3. NEEDS and BENEFITS:

There has been a continuous shortage of teachers who hold Students

with Disabilities Generalist certificate titles in New York. The Department has been considering ways to increase the number of qualified certificate holders in this area, and has worked with the field to address these shortages. One way to expand the pool of qualified teachers of students with disabilities is to extend the grade levels in which they can teach.

Proposed Amendment

At this time, the Department is proposing four different extension certificates for current holders of Students with Disabilities Generalist certificates, as outlined below:

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

Current Certification	Teaching Experience Requirement	Teachers Choose One of the Following Requirements		Proposed Extension
		CTLE	College Course	
Birth – Grade 2	Minimum of 3 years teaching experience at 1st and/or 2nd grade levels.	Minimum of 45 hours of acceptable CTLE focused on elementary level education.	Minimum of 3 semester hours of pedagogical coursework focused on elementary level education.	Grades 3-4
Grades 1-6	Minimum of 3 years teaching experience at 1st and/or 2nd grade levels.	Minimum of 45 hours of acceptable CTLE focused on early childhood education.	Minimum of 3 semester hours of pedagogical coursework focused on early childhood education.	Grades PK-K
	Minimum of 3 years teaching experience at 5th and/or 6th grade levels.	Minimum of 45 hours of acceptable CTLE focused on middle level education.	Minimum of 3 semester hours of pedagogical coursework focused on middle level education.	Grades 7-8
Grades 7-12	Minimum of 3 years teaching experience at 7th and/or 8th grade levels.	Minimum of 45 hours of acceptable CTLE focused on middle level education.	Minimum of 3 semester hours of pedagogical coursework focused on middle level education.	Grades 5-6

For each of the proposed extension titles, a Students with Disabilities Generalist certificate holder must have a minimum of three years of teaching experience in either of the two grade levels closest to the grade levels of the extension, plus either 45 hours of acceptable Continuing Teacher and Leader Education (CTLE) or 3 semester hours of pedagogical coursework focused on the grade levels of the extension sought. Experience for this purpose shall be defined as at least 75% or more of the candidate's time is spent teaching students with disabilities in either of the two grade levels closest to the grade level extension during each of the three school years. For example, a teacher who currently holds a Students with Disabilities Generalist (Grades 1-6) certificate who has had a minimum of 3 years teaching experience at the 5th and/or 6th grade levels must complete either 45 hours of acceptable CTLE focused on middle level education or a 3 semester hour course focusing on middle level pedagogy to obtain a Students with Disabilities Generalist Extension in grades 7-8.

By extending the grade bands in which qualified teachers of students with disabilities may teach, the Department believes this will help to address the shortage of teachers of students with disabilities.

Following the 60-day public comment period, several comments were made on the proposed amendment. In response to those comments and other comments we received from the field, the Department recommends making the following revisions to the proposed amendment:

- Allowing a candidate to submit satisfactory evidence of at least three years of teaching experience in public school districts of this State, State-supported or State-operated schools, private schools established under 853 of the Laws of 1976 or BOCES in either of the two grade levels closest to the grade level extension while holding a valid certificate to be considered for an extension.
- A new Grades 10-12 extension for teachers holding a student with disabilities generalist certificate in grades 5-9. To earn this extension for Grades 10-12, candidates must have a minimum of three years teaching experience at 8th and/or 9th grade levels, complete at least 45 hours of acceptable CTLE or three semester hours of pedagogical coursework focused on adolescent level education, and at least 15 hours of acceptable CTLE or three semester hours in English language arts.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on December 27, 2017, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule do not require any revisions to the previously published Statement in Lieu of a Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on December 27, 2017, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule require revisions to Section 2. Reporting, Recordkeeping, and Other Compliance Requirements of the previously published Rural Area Flexibility Analysis.

2. REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS:

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

Proposed Amendment

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

Current Certification	Teaching Experience Requirement	Teachers Choose One of the Following Requirements		Proposed Extension
		CTLE	College Course	
Birth – Grade 2	Minimum of 3 years teaching experience at 1st and/or 2nd grade levels.	Minimum of 45 hours of acceptable CTLE focused on elementary level education.	Minimum of 3 semester hours of pedagogical coursework focused on elementary level education.	Grades 3-4

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

For each of the proposed extension titles, a Students with Disabilities Generalist certificate holder must have a minimum of three years of teaching experience in either of the two grade levels closest to the grade levels of the extension, plus either 45 hours of acceptable Continuing Teacher and Leader Education (CTLE) or 3 semester hours of pedagogical coursework focused on the grade levels of the extension sought. Experience for this purpose shall be defined as at least 75% or more of the candidate's time is spent teaching students with disabilities in either of the two grade levels closest to the grade level extension during each of the three school years. For example, a teacher who currently holds a Students with Disabilities Generalist (Grades 1-6) certificate who has had a minimum of 3 years teaching experience at the 5th and/or 6th grade levels must complete either 45 hours of acceptable CTLE focused on middle level education or a 3 semester hour course focusing on middle level pedagogy to obtain a Students with Disabilities Generalist Extension in grades 7-8.

By extending the grade bands in which qualified teachers of students with disabilities may teach, the Department believes this will help to address the shortage of teachers of students with disabilities.

Following the 60-day public comment period, several comments were made on the proposed amendment. In response to those comments and other comments we received from the field, the Department recommends making the following revisions to the proposed amendment:

• Allowing a candidate to submit satisfactory evidence of at least three years of teaching experience in public school districts of this State, State-supported or State-operated schools, private schools established under 853 of the Laws of 1976 or BOCES in either of the two grade levels closest to the grade level extension while holding a valid certificate to be considered for an extension.

• A new Grades 10-12 extension for teachers holding a student with disabilities generalist certificate in grades 5-9. To earn this extension for Grades 10-12, candidates must have a minimum of three years teaching experience at 8th and/or 9th grade levels, complete at least 45 hours of acceptable CTLE or three semester hours of pedagogical coursework focused on adolescent level education, and at least 15 hours of acceptable CTLE or three semester hours in English language arts.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on December 27, 2017, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

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

Assessment of Public Comment

Since publication of the Proposed Rule Making in the State Register on December 27, 2017, the State Education Department (SED) received several comments:

1. COMMENT:

Multiple commenters raised concerns about the proposed amendment to authorize certain extensions to certain Students with Disabilities (SWD) certificates. The commenters explain that the "effort and complication" outweigh the benefits of the proposed new extensions, increases the complexity of the certification structure, and creates a burdensome workload, especially for the Office of Teaching Initiatives (OTI) staff that is already overburdened. One commenter explains that the objectives of the proposed amendment can be met with candidates using the supplementary certification that already exists. Another suggestion is to address the immediate need for SWD certified teachers is to amend the current "valid NYS certification" requirement to "valid SWD certification at the adjacent level."

DEPARTMENT RESPONSE:

The supplementary certificate is one option; however, in order to receive a supplementary certificate, a candidate must submit a statement from the superintendent, or from an individual in an equivalent title, that the employing entity seeks to employ the candidate in a title with a demonstrated shortage of certified teachers and that, as a condition of employment, the candidate must be enrolled in study at an institution of higher education leading to an initial or professional certificate in the certificate title sought. However, such a statement is not needed for the proposed amendment. Instead, the candidate may receive the grade level extension by completing certain education and experience requirements outlined in the proposed amendment.

The suggestion to amend the "valid NYS certification" requirement to "valid SWD certification at the adjacent level" would allow SWD certified teachers to teach adjacent grades levels without being required to gain additional knowledge about the adjacent grade levels. Instead, the extension(s) in the proposed amendment require candidates to complete certain continuing teacher or leader education (CTLE) or college coursework in the area of the adjacent grade levels, giving teachers who hold the extension the expertise needed to work in the adjacent grade levels at the time they enter the classroom.

2. COMMENT:

One commenter wrote to advise the Department not to adopt the proposed amendment related to the proposed extension to certain Students with Disabilities (SWD) certificates. The commenter explains that this will add "undue complications and subjective assessment of qualifications" that do not properly assess whether a teacher is prepared to teach the specific developmental levels. In addition, the new extensions increase the complexity of an already complicated certification structure and burdens the OTI staff.

DEPARTMENT RESPONSE:

Please see response to COMMENT #1 above. In addition, in response to the comment about the subjective assessment of qualifications, the Office of Teaching Initiatives (OTI) will work with the Office of Special Education (OSE) to assess the CTLE used to satisfy the requirements for the extension and ensure that any CTLE submitted is appropriate for the grade level extension sought.

3. COMMENT:

Multiple commenters raised concerns related to the proposed extension to certain Students with Disabilities (SWD) certificates.

(a) One concern is with the Pre-K-K extension for those with a SWD Grade 1-6 certificate. The concern is that the completion of CTLE to obtain this extension may not include specific pedagogy addressing competency in the SWD teaching certificate area. Also, while teachers must document completion of CTLE, there is not a specific requirement to document evidence of learning or performance, as opposed to the completion of a college course. The commenter believes that this option is not acceptable.

(b) Another concern relates to the option to take only one college course to acquire the extension. The commenter believes that a minimum of two courses would be needed in the specific pedagogical areas to gain the necessary experience.

DEPARTMENT RESPONSE:

In response to the comments raised, the extensions are limited to two grade levels above or below the grade levels of the certificate held by the teacher. Based on the selected grade levels for the extension, at least three years of the candidate's teaching experience must be in the grade levels close to the grade level of the extension sought, and the candidate must complete either one college level course or 45 hours of CTLE in the

developmental level of the extension sought. If the candidate chooses the option of CTLE, the CTLE will be reviewed for content at the specific grade level extension sought. While there is no specific requirement to document evidence of learning or performance in CTLE, the candidate is also required to have three years of teaching experience within two grade levels of the grade levels of the extension sought. This teaching experience, coupled with CTLE or a college level course in the grade levels of the certificate area sought, will provide the candidate with practical knowledge for working with students in the grade levels of the extension.

4. COMMENT:

Several commenters raised concerns about the proposed amendment related to the proposed extension to certain Students with Disabilities (SWD) certificates. The comments assert that the proposal prioritizes add-on certification for special education over general education, does not provide quality assurance for credit hours or training, and eliminates the need for highly qualified teachers with specialized preparation to work with the youngest and most vulnerable population.

DEPARTMENT RESPONSE:

The purpose of the proposed amendment is not to "prioritize" one certification area over another, but to create a pathway for those individuals who have demonstrated the competency and skills needed to teach in an extended grade level through their prior experience and with some additional CTLE or coursework in the grade levels in which he/she is seeking an extension. Without a certified teacher, students with disabilities may be vulnerable to a teacher teaching outside of their certification, creating a situation with much less quality assurance related to their preparation.

Related to quality assurance, OTI will work with the OSE to assess the CTLE used to satisfy the requirements for the extension and ensure that the CTLE is appropriate for the grade level extension sought. Lastly, the Department believes that the teaching experience required in the proposal, coupled with CTLE or a college course, provides the candidate with practical knowledge for working with students in the grade levels of the extension that cannot be obtained with coursework alone.

5. COMMENT:

Several commenters raised the following concerns, including:

(a) The proposal is only a temporary fix and the commenters recommend a long-term solution to address the entire field serving students with disabilities.

(b) The commenters question whether there is a shortage in the students with disabilities field and whether this proposal will benefit the field. The commenter states that there are no figures that identify how this shortage is quantified in the field, the number of possible extension applications, or projections that estimate the number of anticipated certificate extensions.

(c) The commenters are concerned that the proposal will burden the Office of Teaching Initiatives (OTI) because the duties would be in addition to other administrative challenges such as certification registration that are already assigned to an overburdened office.

(d) The commenter is concerned about ensuring the rigor of the 45 hours of CTLE required and that the CLTE hours would need to be comparable and equivalent to the three semester hours of pedagogical coursework.

(e) Last, the commenter is concerned that the requirement of "at least 75 percent of the candidate's time" teaching students in the grade levels of the extension sought is an "unwieldy standard" that will be difficult to determine. In addition, the commenter indicates that it will limit experience to New York State public schools instead of the broader definition referenced in section 80-1.1(b)(47) as simply school experience.

DEPARTMENT RESPONSE:

In response to the comments above:

(a) The Department has been working with the field on developing long-term solutions to the issues facing those serving Students with Disabilities. The Department agrees and will continue to explore options for a long-term solution to the shortage of special education teachers.

(b) Although the Department is unaware of "exact numbers," the proposal is directly responding to concerns raised in the field, by those serving the target population, school administrators, and the public.

(c) The Board of Regents has determined these certificate extensions will support the students in our schools and therefor the Office of Teaching Initiatives is prepared to take on this additional workload.

(d) Please see response to COMMENT #4 above.

(e) Again, this is a standard that OTI will work with the OSE to assess whether a candidate has met the requirement for three years of experience. The regulation requires 75 percent of the time must be in the grades adjacent to the extension. This, combined with the CTLE or course credit, will provide the preparation needed to allow for the certificate holder to support student learning in the extension grade levels.

6. COMMENT:

Several commenters raised concerns that 45 hours of CTLE is not sufficient to provide teachers with the knowledge and skills to teach a new age group, mainly because CTLE credits do not require individuals to demonstrate mastery of the knowledge and skills of the coursework. The commenters recommend not allowing CTLE credits to be used for granting the proposed extensions.

DEPARTMENT RESPONSE:

The Department agrees that CTLE alone would not be sufficient. However, the Department believes that CTLE plus three years of teaching in an adjacent grade level is sufficient to successfully prepare already certified teachers to teach a new developmental age group. In addition, OTI will work with the OSE to assess the CTLE used to satisfy the requirements for the extension and ensure that the CTLE is appropriate for the grade level extension sought.

7. COMMENT:

One commenter raised concerns regarding the Students with Disabilities extension and the choice of requirements proposed. The commenter is concerned that there is no specific pedagogy directly linked to grade-level performance and noted that the required coursework should target human development in children and/or adolescents with special needs in the specific grade levels. The commenter also believes that behavior management should be included, with behavioral interventions as well.

DEPARTMENT RESPONSE:

Candidates seeking extensions already have a students with disabilities certificate. The majority of the pedagogical, human development, and behavioral management content related to grade levels in the extension would have been included in the educator preparation program coursework that leads to the students with disabilities certificate. Therefore, the Department does not believe that additional coursework in these areas is needed. In addition, OTI and OSE will work together to assess the CTLE used to satisfy the requirements for the extension and ensure that the CTLE is appropriate for the grade level extension sought.

8. COMMENT:

Several commenters raised the concern that teachers with a current students with disabilities certificate in grades 1-6 who receive the PreK-K extension will not be prepared to teach in this grade band with either CTLE or just one college course. The commenters assert that the first six years are the most important in intervention for students with disabilities. While the commenters recognize a teacher shortage, they believe that allowing individuals to obtain certifications they are not qualified to hold is not the way to solve the problem.

DEPARTMENT RESPONSE:

The proposed amendment provides flexibility for teachers who are already certified teachers of students with disabilities to gain certification in a narrow band of adjacent grade levels in which they have had three years of similar teaching experience and have at least 45 additional CTLE hours or one college level course in the grade levels of the extension sought. The Department believes that these additional requirements provide teachers with the knowledge and skills necessary to teach in adjacent grade levels.

Department of Environmental Conservation

NOTICE OF ADOPTION

Prevention and Control of Environmental Pollution by Radioactive Materials

I.D. No. ENV-14-17-00001-A

Filing No. 371

Filing Date: 2018-04-10

Effective Date: 30 days after filing

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

Action taken: Amendment of Part 380 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, arts. 1, 3, 17, 19, 27, 29, 37, section 3-0301(1)(i), (2)(a) and (m)

Subject: Prevention and Control of Environmental Pollution by Radioactive Materials.

Purpose: To amend regulations pertaining to disposal and release of radioactive materials to the environment.

Substance of final rule: Prevention and Control of Environmental Pollution by Radioactive Materials

Full text of the Express Terms is available on the New York State Department of Environmental Conservation's website at: http://www.dec.ny.gov/regulations/106149.html

The New York State Department of Environmental Conservation (DEC) has amended 6 NYCRR Part 380, which regulates the disposal and release of radioactive material to the environment pursuant to Articles 1, 3, 17, 19, 27, 29, and 37 of the Environmental Conservation Law (ECL) and the State of New York's agreement with the United States Nuclear Regulatory Commission (NRC).

Part 380 contributes to meeting the legislative goals of conserving, improving, and protecting the State's natural resources and environment and preventing, abating and controlling water, land, and air pollution. This is done through several provisions in the rule. Part 380 sets limits on the radiation dose to members of the public due to releases of radioactive material to the environment. It requires parties to obtain permits for most releases of radioactive material made directly to the environment. Radiation exposures in uncontrolled areas in the environment are required to be kept as low as reasonably achievable. The regulations also restrict the disposal of radioactive material to only those methods approved in the regulations or by DEC in a permit.

The amendments do not change the general requirements for disposal of radioactive material or obtaining permits, or the requirement that exposures be kept as low as reasonably achievable. New provisions that contribute to meeting the legislative goals include applying a constraint on emissions to the air, which is lower than the current limit.

The amendments to Part 380 update several provisions that are required for compatibility with federal regulations, simplify and update language, and add several needed provisions that have been absent from the regulations. The following outline highlights these changes.

In subpart 380-1, several changes to the general provisions have been made for the purpose of improving clarity and to fill regulatory gaps. Reference to Article 37 of the ECL has been added, as it had been previously inadvertently omitted. Applicability has been expanded to include the use of licensed radioactive material in the environment (e.g., in environmental studies). Because the use of radioactive material in the environment is not currently specifically identified in regulation as being subject to Part 380, DEC cannot issue Radiation Control Permits for such uses until the amendments are adopted. This subpart has also been expanded to clarify that certain types of radioactive materials are not subject to Part 380, such as intact smoke detectors and household waste containing excreted residues of radiopharmaceuticals. This clarification should help avoid confusion about the disposal of radioactive materials that are not subject to regulatory control. In addition, a paragraph has been added to clarify that sites containing buried radioactive waste are subject to Part 380.

In subpart 380-2, several additions and changes in definitions have been made to maintain compatibility with federal regulations, improve clarity, and incorporate commonly used terms of art. The definition changes are highlighted below.

"Disposal" has been added, as it is not currently defined in Part 380. "Release" has been added, as it replaces the former use of the term "discharges" throughout the regulation. "Discharge" has been revised to apply only to the release of material to ground or surface water. The term currently applies to the release of radioactive material to both air and water. "Emission" has been added for the release of material to the air. "Effluent" has been added to mean material released to air or water, as this term appears in the Table of Concentrations in section 380-11.7. "Effluent treatment" has been added as it is referenced in section 380-3.4. "Incineration" is defined as a process, instead of the equipment used. "Incinerator" has been deleted. "Permit" has been expanded to apply to the use of radioactive material in the environment, and for the maintenance of a former radioactive waste land burial site. "Permittee" has been updated for consistency with language used in other DEC regulations. "Loss of control of radioactive material" has been revised because the previous definition was limited to licensed radioactive material. "Uncontrolled release" has been added for unplanned releases of radioactive material to the environment. This term is referenced in section 380-9.2 and is needed to differentiate from controlled releases of radioactive material to the environment as authorized under the Part 380 regulations. "TENORM" has been added to clarify that technologically enhanced naturally occurring radioactive material (TENORM) is the same as processed and concentrated naturally occurring radioactive material, which is regulated radioactive material.

Other definitions have been added or revised as required for compatibility with federal regulations issued by the NRC in 10 CFR 20. Definitions for "dose constraint" and "public dose" have been added. Likewise, the definitions for "total effective dose equivalent" and "member of the public" have been revised as required to maintain compatibility with federal rules.

In subpart 380-3, permit requirements have been clarified to identify each type of disposal or release of radioactive material that can only be undertaken as authorized by DEC in a permit. Also, the required content of permit applications has been expanded to establish in regulation the minimum information that must be included in a permit application. These criteria have already been used to evaluate the sufficiency of submitted permit applications for many years.

In subpart 380-4, language has been added so that all allowed waste disposal methods for radioactive material are now referenced in this subpart. The disposal of a specific category of wastes (the so-called biomedical exemption) has been expanded to include animal bedding meeting certain criteria, which supports the longstanding disposal exemption that exists for animal tissue containing small amounts of radioactive material.

In subpart 380-5, which pertains to radiation dose limits for individual members of the public, a 10 millirem constraint on airborne emissions has been added to maintain compatibility with federal rules. This dose constraint has already been implemented by permit condition for several years. Also, the reference to 40 CFR 190 has been deleted because it was inappropriately included in Part 380.

In subpart 380-6, annual calibrations are now required for instruments used to measure effluent flow rates. This requirement has already been implemented by permit condition for several years.

No significant changes were made to subpart 380-7, Release Minimization Programs.

In subpart 380-8, which pertains to records, regulated persons are now authorized to record quantities of radioactivity in the International System of Units (also known as SI). Two new requirements have been added: (1) data maintained in electronic format must be made available to DEC via hardcopy upon request; and (2) records required by Part 380 must be transferred from the old permittee to the new permittee when a permit is transferred. These requirements ensure that: (1) inspectors can obtain information and raw data that may only exist on a computer system, and (2) records relevant to Part 380 compliance are properly transferred when a permit is transferred.

In subpart 380-9, which pertains to reports, the requirement for a permittee to submit annual reports has been expanded to require reporting of environmental dosimeter results when the acquisition of such data is required by the permit. This requirement has already been implemented by permit condition for several years. Several requirements have changed regarding Notification of Incidents; some changes were required to maintain compatibility with federal regulations, and other changes were added to lower the reporting thresholds because the federal rules requiring notification of incidents only involve large exposures. Reports are now required for: (1) uncontrolled releases or events that could cause releases; (2) exceedance of any permit or regulatory limit (this requirement has already been implemented by permit condition for several years); or (3) exceedance of the dose constraint. The contents of reports and timeframes are specified.

In subpart 380-10, which includes the "General Regulatory Requirements," several additions have been made. The new prohibition of engaging in deliberate misconduct is required for compatibility with federal rules. This prohibits the deliberate submission of inaccurate or incomplete information to DEC, and applies to permittees, applicants and contractors. Also, information submitted to DEC must be complete and accurate, and a prohibition has been added against uncontrolled releases, unauthorized transfers, or abandonment of radioactive material or failure to comply with any requirement in Part 380. These additions strengthen DEC's enforcement capabilities in the event that violations of Part 380 are identified.

In subpart 380-11, two new isotopes have been added to the Tables of Concentrations: N-13 and O-15. These additions are required to maintain compatibility with the federal rules issued by NRC in 10 CFR 20.

In summary, the amendments to Part 380: (1) update several provisions that are required for compatibility with federal regulations; (2) simplify, clarify and update language; and (3) add several needed provisions that have been absent from the regulations when it was previously promulgated.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 380-1.2(a), (h), (i)(3), 380-1.3(b), 380-2.1(a)(20), (50), (66), 380-3.2(e)(4), 380-4.1(a)(4), 380-9.2(a), (b)(2), (5), 380-10.8, 380-10.9(a) and 380-11.4(b).

Text of rule and any required statements and analyses may be obtained from: Sandra Hinkel, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7255, (518) 402-9625, email: dec.sm.Regs.Radiation

Additional matter required by statute: Short Environmental Assessment Form, Negative Declaration, and Coastal Assessment Form were completed for the proposed rule making.

Summary of Revised Regulatory Impact Statement

Prevention and Control of Environmental Pollution by Radioactive Materials

Full text of the Regulatory Impact Statement is available on the New York State Department of Environmental Conservation's website at: http://www.dec.ny.gov/regulations/106149.html

1. STATUTORY AUTHORITY

The New York State Department of Environmental Conservation (DEC)

regulates the disposal and release of radioactive material to the environment pursuant to Articles 1, 3, 17, 19, 27, 29, and 37 of the Environmental Conservation Law (ECL) and the State of New York's agreement with the United States Nuclear Regulatory Commission (NRC).

New York State Agreement State Program:

The Atomic Energy Act (AEA) of 1954 created the federal program for controlling the use of most radioactive materials and for limiting the public exposure to radiation resulting from that use. In 1960, the AEA was amended to allow states to enter into agreements with the NRC whereby the authority to license most uses of radioactive material is relinquished to the state. New York State became an Agreement State in 1962. The State's agreement is implemented by the New York State Department of Health (DOH), the New York City Department of Health and Mental Hygiene (NYCDHMH), and DEC.

ECL Articles 1 and 3:

The ECL vests in DEC broad powers with respect to the discharge of pollutants into the environment. Those powers are set forth in ECL section 1-0101(1). DEC further implements this policy by ECL section 3-0301(1). There is not a separate ECL Article that comprehensively governs the regulation of radioactive materials. Rather, the source of legal authority is divided among the following ECL Articles: Article 17 (Water), Article 19 (Air), and Article 27 (Solid Waste), Article 29 (Low-Level Radioactive Waste Facilities), and Article 37 (Substances Hazardous or Acutely Hazardous to Public Health, Safety or the Environment).

2. LEGISLATIVE OBJECTIVES

Part 380 contributes to meeting the legislative goals of conserving, improving, and protecting the State's natural resources and environment and preventing, abating, and controlling water, land, and air pollution.

The amendments do not change the current requirements governing the disposal of radioactive material, obtaining permits for releases of radioactive material to the environment, or the requirement that exposures be kept as low as reasonably achievable. New provisions that contribute to meeting the legislative goals include applying a constraint on emissions to the air, which is lower than the prior limit.

3. NEEDS AND BENEFITS

The purpose of Part 380 is to control the release of radioactive material to the environment in order to protect the public health and the environment. The regulations apply to all State-regulated parties that dispose of or release radioactive materials to the environment.

These amendments are needed because of New York State's agreement with the NRC: the State is required to have regulations that are compatible with the federal regulations. This amendment is needed to incorporate applicable federal changes to 10 CFR 20, the federal standards for protection against radiation, that were made from 1991 through 2008.

The amendments also simplify language, define commonly used terms of art, and clarify several regulatory provisions. These clarifications benefit the regulated community whose operations are regulated by Part 380, and strengthen DEC's enforcement capabilities regarding these regulatory provisions.

In subpart 380-1, several changes to the general provisions have been made for the purpose of improving clarity and to fill regulatory gaps.

In subpart 380-2, several additions and changes to the definitions have been made to maintain compatibility with federal regulations, improve clarity, and incorporate commonly used terms of art.

In subpart 380-3, permit requirements have been clarified to identify each type of disposal or release of radioactive material that can only be undertaken as authorized in a permit. Also, the required content of permit applications has been expanded to establish the minimum information that must be included in a permit application.

In subpart 380-4, language has been added so that all allowed waste disposal methods are referenced in this subpart.

In subpart 380-5, a 10 millirem (mrem) constraint on airborne emissions has been added, as required to maintain compatibility with federal regulations.

In subpart 380-6, annual calibrations are required for instruments used to measure effluent flow rates.

No significant changes were made to subpart 380-7.

In subpart 380-8, regulated parties are authorized to record quantities of radioactivity in SI units. Also, two new requirements have been added: (1) data maintained in electronic format must be made available to DEC via hardcopy upon request, and (2) records required by Part 380 must be transferred from the old permittee to the new permittee when a permit is transferred.

In subpart 380-9, the requirement for a permittee to submit annual reports has been expanded to require reporting of environmental dosimeter results when the acquisition of such data is required by the permit. Several requirements have changed regarding Notification of Incidents - - some changes were required to maintain compatibility with federal regulations; others were made to lower the reporting thresholds.

In subpart 380-10, several additions have been made to the General Regulatory Requirements. The new prohibition of engaging in deliberate misconduct is required for compatibility with federal regulations. Also, information submitted to DEC must be complete and accurate, and a prohibition has been added against uncontrolled releases, unauthorized transfers, or abandonment of radioactive material, or failure to comply with any requirement in Part 380.

In subpart 380-11, two new isotopes have been added to the Tables of Concentrations: N-13 and O-15. These additions are required to maintain compatibility with federal regulations.

4. COSTS

Costs to Regulated Parties:

Part 380 applies to all state-regulated parties that use or dispose of radioactive material in quantities and concentrations that are subject to regulation by the licensing agencies of New York State (i.e., DOH and NYCDOHMH).

In 2012, there were 28 persons holding one or more Part 380 permits. Those 28 permittees held a total of 30 permits: 1 for the incineration of radioactive material, 26 for releases to the air, 1 for discharges to surface water, and 2 for the maintenance of former radioactive waste burial sites.

There should be no additional costs to regulated persons due to the requirements to meet the 10 mrem dose constraint on airborne emissions or to report environmental dosimeter results in their annual reports, because permittees have already been subject to this requirement via permit condition for several years. There may be some additional costs to regulated persons due to the lower threshold for reporting of incidents, via expenditure of staff time to prepare and submit reports of incidents and follow up actions.

Costs to the Department, State, and Local Government:

DEC will expend resources and staff time preparing to implement the amendments. Guidelines and explanatory documents distributed to regulated persons must be written, and staff must be trained in the implementation of the revised regulations. This will require several months of staff time. After the initial preparation and training period, the routine implementation of the amended regulation is not expected to cost more (on a cost per regulated person basis) than the implementation of the current Part 380 program.

In addition to the cost to DEC, the other State agency in the Agreement State program, DOH, will expend some staff time becoming familiar with DEC's amended regulation. This may require one or two days of staff time. At least two state agencies and one campus of the state university system have been issued Part 380 permits. Their costs as regulated persons are described above.

The amendments do not place any requirements directly on local governments, except where local governments operate facilities that possess radioactive material. In that case, the cost to the local government is the same as that to other regulated parties. Currently, none of the entities that have been issued Part 380 permits are owned by local governments.

NYCDHMH, as one of the three Agreement State agencies in New York State, will probably expend one or two staff days becoming familiar with the revised Part 380.

5. LOCAL GOVERNMENT MANDATES

The adoption of the amendments do not place any mandates on local governments except for those local governments operating facilities that are regulated parties. In those cases, local governments must meet the requirements placed on all regulated parties. Because control of radioactive materials is preempted by the federal government and only relinquished to Agreement States, local governments, other than New York City, have no regulatory responsibilities over the release or disposal of radioactive materials.

6. PAPERWORK

Several provisions in the amendments require the preparation and submission of additional paperwork. The amendment clarifies the information that must be included in a permit application. The implementation of lower thresholds for notification of incidents requires reports to be submitted for uncontrolled releases or events that could cause releases, exceedance of any permit or regulatory limit, or exceedance of the dose constraint. The required submission of annual reports has been expanded to include reporting of environmental dosimeter results from permittees whose permit requires the acquisition of environmental dosimetry data.

7. DUPLICATION

The New York State Agreement State program is divided among three agencies. The two agencies other than DEC have the authority to license the possession and use of radioactive materials. It is only when that material is disposed of or released to the environment that it comes under the jurisdiction of DEC. Thus, there is no overlap between the regulatory programs of the licensing agencies and that of DEC.

Because the amendments to Part 380 must be compatible with 10 CFR, many sections in Part 380 are identical, or very similar, to the federal rules. However, 10 CFR applies to federally-regulated facilities, while Part 380 applies to state-regulated facilities, and thus there is no duplication of regulation.

8. ALTERNATIVES

The alternatives available to DEC in developing the amendments to Part 380 were limited by its role as an Agreement State agency. As explained above, an Agreement State's regulations must be compatible with 10 CFR and be adopted essentially verbatim.

Because DEC's regulations must be compatible with NRC's regulations, DEC was precluded from considering alternatives to them. The affected provisions are definitions, dose limits, notification of incidents, the constraint rule, deliberate misconduct, and the addition of O-15 and N-13 to the Tables of Concentrations. Thus, DEC did not consider alternatives to those provisions of the rule.

For those portions of the amendments that are required by federal rule, taking the no-action alternative would not be consistent with New York State's agreement with the NRC. If Part 380 is not revised, not only would it be obsolete, but it would be inconsistent with the regulations of the radioactive materials licensing agencies in New York State. Thus, not revising Part 380 for compatibility with federal rules could jeopardize New York's agreement with NRC.

For those changes that were not based on federal rules, taking the no-action alternative would result in not simplifying regulatory language, not clarifying regulatory provisions, and not filling regulatory gaps which had become apparent through years of implementing the existing Part 380 regulations.

9. FEDERAL STANDARDS

The amendments are more stringent than federal regulations regarding several requirements for reporting of incidents. The amendments require reporting of uncontrolled releases of radioactive material or events that could cause releases or the exceedance of any regulatory limits. These provisions are more restrictive than the federal rules, which require reporting only when dose limits are greatly exceeded. Lower severity events are more common, but are not currently required to be reported. The amendments require lower severity events to be reported; facility compliance with this new requirement enables DEC to ensure that prompt and appropriate actions are taken to resolve such events.

10. COMPLIANCE SCHEDULE

Section 380-1.5 establishes the transition rules for these amendments. In general, all provisions in the amendments become effective on the effective date of the rulemaking. The new 10 mrem dose constraint on airborne emissions has already been in effect as a permit condition for several years. Permittees have also been required to report environmental dosimetry results in their annual reports and report the exceedance of any permit limit, in accordance with permit conditions, for several years.

Revised Regulatory Flexibility Analysis

1. EFFECT OF RULE

The amendments to 6 NYCRR Part 380 affect small businesses that release radioactive material to the environment. (Small businesses that possess radioactive material in a form that is not normally released to the environment are only subject to the disposal restrictions in the existing Part 380. These requirements will not be changed by the Part 380 amendments.) Affected parties may include such small businesses as medical practices, radioactive waste brokers, small research or diagnostic laboratories, radioisotope production facilities, and manufacturers that use radioactive material in their production or quality control processes.

Only one of the parties that currently have a Part 380 permit is a small business. It is a company that produces isotopes for use in medical imaging. Another type of small business that will be affected by this regulation is health physics consultants that may be hired by regulated parties to assist in implementing these amendments. These businesses may benefit from increased business due to these amendments, although they will also need to invest time and resources in becoming familiar with the new rules.

2. COMPLIANCE REQUIREMENTS

The current Part 380 sets limits on the radiation dose to members of the public that could be received from the release of radioactive material to the environment. Regulated parties must restrict their releases so that those dose limits are not exceeded. The amendments to Part 380 add a new 10 millirem (mrem) dose constraint for members of the public that could result from radioactive airborne emissions in one year. Regulated parties are not expected to have to change their operations to comply with this amendment because the doses from all currently regulated releases are already below the new dose constraint. Part 380 Radiation Control Permitees have already been subject to the 10 mrem dose constraint by a permit condition for the past several years.

The amendments lower the reporting threshold requiring regulated parties to notify the New York State Department of Environmental Conservation (DEC) of any release of radioactive material to the environment. Reports will be required for uncontrolled releases or events that could cause releases, for exceedance of any permit or regulatory limit, or for exceedance of the dose constraint; the contents of reports and timeframes are specified in the amendments.

The amendments expand the requirement for permitees to submit annual reports to also require reporting of environmental dosimeter results when the acquisition of such data is required by the permit. Regulated parties are not expected to have to change their operations to comply with this amendment because this requirement has already been implemented by a permit condition for several years.

The amendments also expand the requirement for annual calibration of radiation detection instruments to include instruments used to measure effluent flow rates. Permittees are not expected to have to change their operations to comply with this amendment because this requirement has already been implemented by a permit condition for several years.

3. PROFESSIONAL SERVICES

The amendments to Part 380 do not set any requirements that require any professional services beyond those already needed to comply with Part 380. Regulated parties should have on staff one or more professionals knowledgeable in the principles of health physics, radiation protection, and control and monitoring of releases to the environment. In the past, some small businesses have hired consultants to prepare part or all of their permit applications. This practice is expected to continue upon the adoption of the amendments to Part 380.

4. COMPLIANCE COSTS

The amendments to Part 380 include a 10 mrem dose constraint for members of the public that could result from radioactive emissions to the air. No regulated party will have to make any initial capital or non-capital investments to meet this requirement as they are already complying with the 10 mrem dose constraint.

The amendments lower the reporting threshold requiring regulated parties to notify DEC of any uncontrolled release of radioactive material to the environment. This requirement will result in expenditure of staff time to prepare and submit reports of incidents and conduct follow up actions, should a reportable incident occur. Historically, such reports have usually been voluntarily submitted by permittees, as good practice. A reportable incident will require several hours to investigate, document, and institute corrective actions; such work will likely be conducted by the facility's onsite radiation protection staff. Such incidents do not occur frequently.

The amendments expand the requirement for permittees to submit annual reports to also require reporting of environmental dosimeter results when the acquisition of such data is required by the permit. There will be no increase in costs to regulated parties as they are already complying with this requirement.

The amendments also expand the requirement for annual calibration of radiation detection instruments to include instruments used to measure effluent flow rates. There will be no increase in costs to regulated parties as they are already complying with this requirement.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Implementation of the amendments will be economically and technologically feasible for small business and local governments. Regulated parties currently manage the possession, use and disposal of radioactive material in accordance with a host of existing regulatory requirements which address the sufficiency of facilities, equipment, and staff expertise necessary to conduct operations safely. Most of the changes in the amendments to Part 380 are already being met by regulated parties by permit conditions, thus demonstrating that the amendments are economically and technologically feasible.

6. MINIMIZING ADVERSE IMPACT

Provisions in the amendments to Part 380 will not have an adverse impact on small businesses, as most provisions are already being met by regulated parties. DEC did not have the option of relaxing these requirements for small businesses. The alternatives available to DEC in writing the amendments to Part 380 were limited by DEC's status as an Agreement State agency. Under New York State's (State) agreement with the United States Nuclear Regulatory Commission (NRC), in which NRC has relinquished its authority to regulate the use and possession of most radioactive material to the State, DEC's Part 380 regulations must be compatible with the federal regulations promulgated by the NRC.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

As a public outreach initiative in early 2010, information on this rulemaking was mailed to all Part 380 permittees and applicants, radioactive materials licensees, and environmental and public interest groups in the State. Also, a preliminary draft of the amendment was posted on DEC's website and a notice was published in DEC's Environmental Notice Bulletin (ENB). A public hearing on the proposed amendments to Part 380 was held during the public comment period on May 25, 2017 in Albany. Prior to the hearing on May 25, 2017, a public availability session was also conducted and several questions were addressed. DEC continues to post relevant information on its website about the Radiation Program and documents pertaining to the Part 380 rule making. A notice was also posted in DEC's ENB on April 5, 2017 about the proposed rule making, and the public hearing and public availability session that were held on May 25, 2017.

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

DEC does not believe that there is a need for a cure period for the amendments to Part 380. Significant amendments (summarized below) are already implemented, as these requirements have been included as permit conditions for the past several years. Such amendments required by a permit condition are: (1) 10 mrem dose constraint for members of the public that could result from radioactive airborne emissions in one year; (2) notification of uncontrolled release, or incidents that are in exceedance of any permit or regulatory limit; (3) annual reporting of environmental dosimeter results when a permit requires acquisition of such data; and (4) annual calibration of instruments used to measure effluent flow rates. Since these requirements are already provided as permit conditions, they are not imposed to the regulated community without prior notice and a cure period is not needed. The regulated community is required to comply with the amendments to Part 380 upon the effective date, which is 30 days after DEC files the Notice of Adoption with the State Department of State. Furthermore, no new penalties are created by the amendments to Part 380 because enforcement is governed by statutory language which is set forth in Article 71 of the Environmental Conservation Law.

9. INITIAL REVIEW OF THE RULE

DEC will conduct an initial review of the rule within three years of the promulgation of the final rule.

Revised Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS

For purposes of this Rural Area Flexibility Analysis, "rural area" means those portions of the state so defined by Executive Law section 481(7). SAPA section 102(10). Under Executive Law section 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of two hundred thousand or greater population, 'rural areas' means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein." There are 44 counties in New York State (State) that have populations of less than 200,000 people and 71 towns in non-rural counties where the population densities are less than 150 people per square mile. This rule applies statewide so it applies to all rural areas of the State.

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

Several provisions in the rule clarify and expand requirements for the preparation and submission of permit applications, notification of incidents, and annual reports, as well as the maintenance of specific records of disposals and releases. Such work is typically conducted by the facility's on-site facility radiation protection staff, although a regulated facility may elect to hire a health physics contractor to assist in the preparation of required records and reports.

3. COSTS

Regulated parties subject to this rule should experience little or no increase in costs. Many provisions have already been in effect for several years via permit condition. The new, lower threshold for reporting of incidents will require the expenditure of staff time to prepare and submit reports of incidents, should they occur.

4. MINIMIZING ADVERSE IMPACT

This rule is not expected to generate any adverse impact to regulated parties. As stated previously, there would be little or no increase in costs for regulated parties.

5. RURAL AREA PARTICIPATION

A public outreach effort was conducted in early 2010: regulated and interested parties were mailed an informational package regarding the preliminary draft of the proposed rule; this information was also posted on New York State Department of Environmental Conservation's (DEC) web site and DEC's Environmental Notice Bulletin (ENB). A public hearing on the proposed amendments to Part 380 was held during the public comment period on May 25, 2017 in Albany. Prior to the hearing on May 25, 2017, a public availability session was also conducted and several questions were addressed. DEC continues to post relevant information on its website about the Radiation Program and documents pertaining to the Part 380 rule making. A notice was also posted in DEC's ENB on April 5, 2017 about the proposed rule making, and the public hearing and public availability session that were held on May 25, 2017.

Revised Job Impact Statement

In accordance with Section 201-a(2)(a) of the State Administrative Procedures Act (SAPA), a Job Impact Statement has not been prepared for this rule as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York State.

Part 380 requirements control the release of radioactive material to the environment. This rulemaking updates several provisions that are required for compatibility with federal regulations, simplifies and updates language, and adds several needed provisions that have been absent from the regulations. The parties affected by the amendments are facilities that possess regulated radioactive materials.

This rule is not expected to cause the loss of jobs at facilities that possess regulated radioactive material. Many of the new requirements in this rule have already been in effect for several years through permit conditions. The new, lower threshold for reporting of incidents will require the expenditure of staff time to prepare and submit reports of incidents, should such incidents occur. Responsibility for ensuring compliance with this rulemaking will likely be designated to on-site facility radiation protection staff, although a regulated facility that has experienced a serious incident may elect to hire a health physics contractor to assist with the investigation, documentation, reporting, and correction of the root causes of such an incident. Regulated facilities are located throughout the State and compliance with this rulemaking will not have any adverse impact on jobs in any areas of the State.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Full text of the Assessment of Public Comment is available on the New York State Department of Environmental Conservation's website at: http://www.dec.ny.gov/regulations/106149.html

Introduction

This summary reflects the responses of the New York State Department of Environmental Conservation (DEC) to the main comments submitted by the public regarding the adoption of proposed amendments to 6 NYCRR Part 380, Prevention and Control of Environmental Pollution by Radioactive Materials.

The rule making was proposed on April 5, 2017 with the Notice of Proposed Rule Making published in the State Register and an announcement posted in DEC's Environmental Notice Bulletin. This included a 90 calendar day public comment period that ended on July 5, 2017, which was an additional 30 days beyond the initial 60-day comment period due to requests received from the public to extend the comment period. A legislative public hearing was held on May 25, 2017 in Albany with a public availability session held prior to the hearing. Oral comments were received during the hearing by one speaker and subsequently 99 commenters submitted written submissions (hard copy and electronic) by the July 5, 2017 public comment period deadline.

DEC received comments from four medical centers (University of Rochester Medical Center, New York University Langone Medical Center, Weill Cornell Medical Center, Albany Medical Center), business interests (American Petroleum Institute, New York State Business Council), a nuclear power generator (Entergy), 32 environmental advocacy groups and 81 individuals.

Based on comments received, DEC made the following changes to Part 380: (1) to improve clarity, the word "radioactive" was added to paragraph 380-1.2(a) between the words "licensed" and "materials;" (2) proposed paragraph 380-1.2(i)(3) was removed because the proposed provision is redundant; (3) the words "in the environment" were added to the definition of disposal in paragraph 380-2.1(a)(20) to clarify that depositing or injecting radioactive material in the environment is disposal and the phrase "in a scientific or other study" was deleted because any permitted use of radioactive material in the environment is not an act of discarding and should not be defined as disposal; (4) language was added to the definition of technologically enhanced naturally occurring radioactive material (TENORM) in paragraph 380-2.1(a)(66) to clarify that TENORM can be produced during the process of manufacturing or water processing; (5) the word "study" was replaced with "use" in the permitting requirements in 380-3.2(e)(4) so that the types of allowable permitted uses of radioactive material in the environment are not limited to only studies; (6) the examples of uncontrolled releases at the end of paragraph 380-9.2(a) were deleted for consistency with the definition of uncontrolled releases in paragraph 380-2.1(a)(67); and (7) the redundant phrase "or to mitigate the consequences of an accident" was deleted from the last sentence of paragraph 380-9.2(b)(2) because the notification provisions in paragraphs 380-9.2(b)(1)-(7) would ensure notification.

Main Themes of Comments

1. Support of the Proposed Amendments to Part 380

Four commenters indicated their support of the adoption of the proposed amendments. The commenters stated that the proposed rule provides a reasonable balance between environmental protection and the ability to execute work, that the proposed amendments are reasonable, and that the proposed amendments reflect best practices for the monitoring, control, and reporting of environmental radiation discharges and exposures, without imposing unreasonable financial burden or oversight.

2. Challenges to Part 380

a. Several commenters stated that the radiation dose limits for the public in the proposed amendments are not acceptable and must be reduced. DEC's response explained that the 100 millirem (mrem) public dose limit in the Part 380 regulations have not changed, other than the addition of a 10 mrem dose constraint for radioactive emissions, and that the public dose limits are consistent with federal standards, which are protective of public health and the environment, and are based on international and national guidance.

b. Several commenters stated that DEC should not allow disposal by variance, and considered variances a regulatory loophole. DEC's response explained that the variance provision in Section 380-3.5 describes the process for requesting a variance from specific provisions of Part 380, and this provision has not changed, other than being reworded to clarify that an application for a variance to approve proposed procedures to dispose of radioactive material is not the same as an application for a permit; instead, a variance application is for approval for alternative disposal procedures. DEC is required to maintain the variance provision for compatibility with federal regulations.

c. Many commenters urged DEC to adopt the U.S. Environmental Protection Agency's (EPA) definition of technologically-enhanced naturally-occurring radioactive material (TENORM), which is broader than DEC's definition. DEC's response explained that 6 NYCRR 380-1.2(e) continues to regulate naturally-occurring radioactive material (NORM) that has been processed and concentrated, and now clarifies that such regulated radioactive material is commonly referred to as TENORM. The definition of TENORM being added to Part 380 is not identical to EPA's definition, because EPA's definition includes NORM that is exposed to the accessible environment. DEC is not adopting that portion of EPA's definition of TENORM because it could be interpreted to include materials containing levels of NORM present in natural isotopic abundance, whereas Part 380 regulates NORM that has been processed and concentrated (i.e., NORM that is present in elevated concentrations due to human activity).

d. Many commenters requested that all waste generated by the drilling and development of oil and gas wells subject to hydraulic fracturing that are now classified as NORM be reclassified as TENORM. DEC's response explained that waste containing NORM that has been processed and concentrated continues to be regulated radioactive waste per 6 NYCRR 380-1.2(e), and that waste containing NORM in natural isotopic abundance is not regulated waste under Part 380. Drilling waste (i.e., cuttings) contains NORM in natural isotope abundance; for this reason, drilling waste is not regulated by Part 380, because such waste does not contain elevated levels of radioactive materials resulting from processing. It would be inappropriate to reclassify waste containing NORM as TENORM when the waste does not exhibit elevated levels or radioactivity. In addition, other DEC regulations (6 NYCRR Parts 360 and 363) apply to landfills; waste containing NORM is not prohibited from disposal in landfills within the State. However, Part 363 prohibits the disposal of waste containing elevated levels of radioactivity, consistent with Part 380 requirements. Hence, TENORM is prohibited from disposal in a Part 363 landfill.

e. Many commenters requested that the natural gas from Marcellus and Utica shale formations in Pennsylvania be classified as TENORM. DEC's response explained that it would not be appropriate to classify natural gas, from any source, as TENORM; natural gas contains radon, which is NORM, and is not subject to Part 380. Radon levels in natural gas have not been found to exist in significant concentrations, and do not result in elevated indoor radon levels.

f. Several commenters claimed that DEC's definition of TENORM does not account for the buildup of radioactivity in pipes. DEC's response explained that the buildup of NORM in oil and gas system infrastructure has long been recognized as processed and concentrated NORM (aka TENORM), and the disposal of such radioactive waste has always been subject to regulation under Part 380.

3. Concerns with the Proposed Amendments

a. A commenter expressed concern that the language change in 6 NYCRR 380-1.2(f) shifting the regulatory focus from "person" to the "disposal or release" suggests that radiological releases from facilities licensed by the U.S. Nuclear Regulatory Commission (NRC) could now be subject to Part 380. The commenter was concerned that DEC may be attempting to assert jurisdiction with respect to discharges, releases, and emissions at or from NRC-licensed facilities. DEC's response confirmed that it does not seek to assert jurisdiction over NRC-regulated activities at NRC-licensed facilities, and that Part 380 does not apply to NRC licensees, as all radiological activities undertaken by NRC licensees – including disposal and releases, are subject to regulation by NRC. 6 NYCRR 380-1.2(f) continues to state that Part 380 does not apply when such activities are subject to regulation by the NRC.

b. A commenter objected to the change in language regarding applicability from "licensed radioactive material" to all "radioactive material" due to concerns that this language change expanded the scope of material subject to the rule. DEC's response confirmed that the amendment does not expand the scope of regulated material subject to Part 380, which continues to apply to licensed radioactive material and processed and concentrated NORM, and confirmed that although language was added to 6 NYCRR 380-1.2(e) to clarify that processed and concentrated NORM is also commonly referred to as TENORM, this clarification does not change or broaden the scope of this longstanding provision.

4. Requests for Additional Action

While DEC understands the concerns raised by the commenters below, each of these additional actions goes beyond the scope of this rule making. Below is a summary of the requested actions and DEC's responses.

a. Several commenters requested that DEC scrutinize landfills to ensure that no TENORM is accepted from other states, employ radiation testing devices to detect whether incoming loads of waste are contaminated with TENORM, limit how much shale drill cuttings from Pennsylvania can be disposed of on a single landfill, and measure landfill leachate for radium.

Response: This issue is outside the scope of this rulemaking. However, landfill operations are subject to regulation by 6 NYCRR Part 360, et. seq. and the conditions of a DEC-issued permit, which includes the use of radiation detectors to prevent the disposal of prohibited waste such as TENORM and leachate sampling.

b. A commenter requested that DEC independently calculate and measure radon at the wellhead from the Marcellus Shale formation in presently operation wells before issuing drilling permits.

Response: This issue is outside the scope of this rule making. However, well drilling operations are subject to 6 NYCRR Parts 550-559 and the conditions of the drilling permits.

c. A commenter requested that DEC not accept the assumption that radioactivity from nuclear power operations impacts populations independently from other exposures, that DEC protect the most vulnerable individuals and populations, and ensure protection of New York's groundwater and source waters, as the longevity of many radionuclides make emissions from nuclear activities uniquely dangerous, and also stated that federal regulatory actions have enabled nuclear power interests to impose enormous costs upon site communities which have little to no recourse to self-protection.

Response: This issue is outside the scope of this rule making. The NRC has sole jurisdiction of the regulation of nuclear reactors and nuclear power generating stations. Those operations are subject to NRC's federal regulations (10 CFR 19-50) which are protective of all age groups.

NOTICE OF ADOPTION

Bay Scallop Size Limit

I.D. No. ENV-49-17-00005-A

Filing No. 362

Filing Date: 2018-04-06

Effective Date: 2018-04-25

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

Action taken: Amendment of Part 49 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 13-0327

Subject: Bay Scallop Size Limit.

Purpose: Clarify current size limit provisions for the taking of bay scallops.

Text or summary was published in the December 6, 2017 issue of the Register, I.D. No. ENV-49-17-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Debra A. Barnes, Department of Environmental Conservation, Division of Marine Resources, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0477, email: debra.barnes@dec.ny.gov

Additional matter required by statute: This rulemaking has been determined to be a Type II action pursuant to 6 NYCRR 617.5 (c) (20) and (27).

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Control of the Emerald Ash Borer

I.D. No. ENV-17-18-00004-P

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

Proposed Action: Repeal of section 192.7 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), (2)(m) and 9-1303

Subject: Control of the Emerald Ash Borer.

Purpose: To repeal existing restrictions on the movement of ash wood, logs, firewood, nursery stock and wood chips.

Text of proposed rule: 6 NYCRR Section 192.7, "Control of the emerald ash borer," is repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Justin Perry, Chief, Invasive Species and Ecosystem Health, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-9425, email: justin.perry@dec.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Additional matter required by statute: A Short EAF was prepared in compliance with Article 8 of the ECL and Part 617.

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:

Environmental Conservation Law (ECL) section 1-0101 (3) (b) directs the Department of Environmental Conservation ("Department") to guarantee "that the widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintentional consequences." ECL section 3-0301 (1) (b) gives the Department the responsibility to "promote and coordinate management of…land resources to assure their protection." ECL section 3-0301(2) (m) authorizes the Department to adopt rules and regulations "as may be necessary, convenient or desirable to effectuate the purposes of [the ECL]." ECL section 9-1303 authorizes the Department "to make rules and regulations to prevent the spread of or to control forest insects and forest tree diseases, their pupae, eggs and caterpillars, and plants or trees infested by them." This authority also gives the Department the discretion to repeal such regulations where appropriate.

2. Legislative objectives:

The proposed repeal is consistent with the public policy objectives the Legislature sought to advance when it enacted the above statutory authority concerning the spread within the state of injurious insects and the protection of trees, forests and the environment from harm or degradation.

3. Needs and benefits:

At present, 37 counties and portions of five others are within an EAB restricted zone that regulates the movement of ash wood, logs, firewood, nursery stock and wood chips. The intended benefits offered by these regulations were the more effective control of the spread of EAB by restricting the movement of potentially infested materials from within the infested area into non-infested areas of the state. However, given the increased and growing distribution of EAB within the state, the limited benefit of continuing to maintain an EAB restricted zone or zones is overwhelmingly outweighed by cost of the regulations to state government and the forest products industry, and the benefits that will come from allowing the efficient economic utilization of the remaining ash resource throughout New York. Therefore, this regulation repeals existing section 6 NYCRR § 192.7, which parallels the repeal of the New York State Department of Agriculture and Markets' (NYSDAM) existing 1 NYCRR § 141.

EAB is a destructive wood-boring insect that is not indigenous to the United States. EAB causes serious damage to healthy ash trees by boring through their bark, which ultimately results in the death of the tree within two years. Ash trees, ash nursery stock, and material from ash trees like logs, green lumber, firewood, stumps, roots, branches and debris are subject to infestation. Materials at risk of attack and infestation by the EAB include the following species of North American ash trees: White Ash (Fraxinus americana); Green Ash (Fraxinus pennsylvanica); Black Ash (Fraxinus nigra); and Blue Ash (Fraxinus quadrangulata).

EAB was first discovered in Michigan in June 2002, and has since spread to at least 29 other states as well as to three provinces in Canada. The initial detection of this pest in New York occurred on June 16, 2009 in the Town of Randolph, which is in southwestern Cattaraugus County and is adjacent to Chautauqua County. A quarantine of both counties was established pursuant to federal protocols for control of EAB.

Between 2009 and 2015, this quarantine was expanded four times to reflect multiple further detections of EAB. In 2015, the federal EAB quarantine expanded to include all of New York State. At that time, New York adopted section 192.7 to establish 14 EAB restricted zones to slow the spread of EAB within the state. Between 2015 and 2017, these restricted zones were expanded twice following multiple new detections of EAB in traps and surveys, such that they have now merged into a single restricted zone encompassing a majority of the state. As the 2017 growing season progressed, EAB was confirmed in Franklin and St. Lawrence Counties (North of the Adirondack Park) and in the New York City Boroughs of Brooklyn and Queens. This further illustrates the rapid advance of the infestation throughout the habitat range in New York.

The regulations are no longer serving the purpose of slowing the spread or allowing time for municipal governments to plan for the arrival of Emerald Ash Borer. The financial cost of the regulations to state government and the forest products industry now outweigh the limited economic benefit of protecting a dwindling ash resource from infestation. Immediate repeal of these regulations will allow the forest products industry and forest landowners to harvest and process ash that is still of high quality. Harvesting this resource before the infestation becomes even more widespread is in the best interest of forest landowners and the forest products industry as infested ash degrades quickly, resulting in decreased economic value and greater risk of personal injury and property damage as infested trees quickly weaken.

Regardless of any restrictions on the movement of potentially infested materials such as ash wood, movement of EAB itself in any life stage is still restricted by 6 NYCRR Part 575, Prohibited and Regulated Species. EAB is listed therein as a prohibited species, which no person shall sell, import, purchase, transport, introduce or propagate, or knowingly possess with the intent to sell, import, purchase, transport, or introduce, unless issued a permit by the Department for research, education, or other approved activity, under that Part. However, compliance with the provisions of that Part do not apply if the Department determines that the possession, sale, importation, purchase, transportation, or introduction was incidental or unknowing, and was not due to a failure to take reasonable precautions. (See Exemptions listed in 6 NYCRR 575.8.) In the context of EAB, such reasonable precautions shall be considered to include widely accepted best management practices promoted on the Department's website (http://www.dec.ny.gov/animals/45409.html) social media, and interactions with forest owners and the forest products industry. Examples of these best management practices include transporting ash wood during EAB's dormant period to a facility where it will be processed before the start of the active period, and avoiding movement of visibly obvious infested ash wood during the time of the year that EAB adults are active.

Department staff have met with Department of Agriculture and Markets counterparts and representatives of the forest products industry several times over the past several years as the EAB restricted zones were created and subsequently expanded. Over that same time period, Department staff have also met with several local EAB task forces and conducted numerous public events across the state to stress the need for proactive management of ash trees in the face of impending infestation by EAB. DEC will use various communication outlets to convey this message to the public, including Facebook, DEC Delivers, the Department website and press releases in English and Spanish.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: It is anticipated that the fiscal impacts of repealing the existing rule will be to reduce or eliminate costs to regulated parties.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: The only costs to the Department are for outreach, which will not change from the current situation under our existing EAB restricted zone. Some local governments may face expenses in tree maintenance or removal due to EAB infestation, since ash trees are popular trees to use to line streets. However, those costs will occur with or without this rule. Accordingly, local governments will not incur any additional expenses.

(c) The information, including the sources of such information and the methodology upon which the cost analysis is based: The costs analysis set forth above is based upon Department observations of the industry.

5. Local government mandates:

The repeal of 6 NYCRR § 192.7 will not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district, or other special district.

6. Paperwork:

The repeal of 6 NYCRR § 192.7 will reduce the need for paperwork. Currently, regulated articles inspected and certified to be free of EAB

moving from a restricted zone have to be accompanied by a state or federal certificate of inspection or a limited permit. This requirement will be eliminated.

7. Duplication:

The New York State Department of Agriculture and Markets will repeal its existing Part 141 of Title 1 NYCRR, parallel to the Department's repeal of existing section 192.7 of 6 NYCRR under their overlapping authorities.

8. Alternatives:

The alternative of no action was considered. However, this option is not feasible, given that EAB has since been confirmed to be present in several locations well outside of the existing EAB restricted zone. Based on the current known distribution of EAB in the state, maintenance of the restricted zone and restricting the movement of ash wood and other regulated articles will no longer offer the benefit of more effective control of the spread of EAB.

The alternative of expanding the existing EAB restricted zone to encompass the known current range of EAB was considered. However, this option is not feasible because any such expanded restricted zone would by necessity include virtually all of the state, and as such would not significantly reduce the movement of regulated articles or slow the spread of EAB.

In light of these factors, there does not appear to be any reasonable alternative to the repeal of section 6 NYCRR 192.7.

9. Federal standards:

The regulations do not exceed any minimum standards of the federal government. There are no relevant federal standards related to these regulations.

10. Compliance schedule:

This rule shall become effective on and after the tenth day from notification of the clerk of that county. The Department will educate the public about the regulations through information posted on the Department's website and by working with user groups and other stakeholders to help disseminate information regarding the regulations.

Regulatory Flexibility Analysis

Repeal of existing section 192.7 of 6 NYCRR will allow for more efficient utilization of the ash resource in New York. A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with these regulations because the proposal will not impose any reporting, recordkeeping or other compliance requirements on small businesses or local governments. The proposed repeal of existing section 192.7 will allow the efficient utilization of ash by the forest products industry and forest landowners.

Rural Area Flexibility Analysis

Repeal of existing section 192.7 of 6 NYCRR will allow for more efficient utilization of the ash resource in New York. A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed repeal will allow the efficient utilization of ash by the forest products industry and forest landowners.

Job Impact Statement

Repeal of existing section 192.7 of 6 NYCRR will allow for more efficient utilization of the ash resource in New York. A Job Impact Statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed repeal will allow the efficient utilization of ash by the forest products industry and forest landowners.

New York State Gaming Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Regulation of Courier Services that Purchase and Claim Certain Lottery Tickets and Prizes as Agents for Customers

I.D. No. SGC-17-18-00002-P

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

Proposed Action: Amendment of Parts 5000, 5001, 5002, 5003, 5004, 5006, 5007, 5008, 5009, 5010, 5011, 5012, 5013; repeal of sections 5001.8, 5001.22, 5001.23; addition of Part 5014 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19); Tax Law, sections 1601, 1604, 1605, 1607 and 1609

Subject: Regulation of courier services that purchase and claim certain Lottery tickets and prizes as agents for customers.

Purpose: To license courier services to facilitate the sale of Lottery tickets to generate more revenue for education.

Substance of proposed rule (Full text is posted at the following State website: www.gaming.ny.gov): This amendment of Subtitle T of Title 9 NYCRR will implement requirements for the authorization of a new category of lottery licensee to take requests through a computer or mobile device to purchase lottery draw game tickets, purchase the tickets from a licensed New York Lottery retailer as the customer's agent and deliver purchased tickets to the customer or credit the customer with winnings cashed by the courier service as agent of the customer, if the winnings are under or at a $600 threshold. This new category of license will enable the New York State Gaming Commission ("Commission"), operator of the New York Lottery, to generate additional revenue for education in New York State.

Section 5000.2 is repealed and replaced, to include new definitions applicable to the purchasing of lottery tickets through courier services, update the definition of person and omit unnecessary definitions. The phrase lottery revenue is not used in the lottery Chapter of regulations and is not needed. The former definition of lottery ticket is superseded by the new definition of ticket.

Section 5001.27 is amended to specify that a courier service is permitted to charge a convenience fee to an interactive customer if approved by the Commission and that such fee shall be deemed to be independent of the ticket price.

Section 5002.1 is amended to specify that nothing in such section shall prohibit the Commission from authorizing a licensed courier service to provide a claimant with an electronic version of a prize claim form.

Section 5002.5 is amended to provide that a prize of $600 or less resulting from a ticket issued on behalf of a courier customer by a courier service may be validated and redeemed on behalf of the courier customer and disbursed to the player by crediting the courier customer's account; the prize may be paid by direct deposit to the courier customer's bank account; or the prize may be redeemed for cash or by other means approved by the Commission as provided in new section 5014.14.

Section 5004.9 is amended to provide that a draw game ticket or bet ticket is deemed validly issued at the time such ticket is generated by a lottery terminal authorized by the Commission whether by play card, quick pick option, manual entry or other means approved by the Commission.

Section 5007.2 is amended to provide that the use of any non-manual method of marking Mega Millions play slips is permitted only if such method is approved by the Commission.

New Part 5014 governs the licensing of courier services by the Commission. Section 5014.1 provides that no person shall carry on a business in which such person acts as agent for another person in purchasing a lottery ticket unless such person is duly licensed as a courier service by the Commission.

Section 5014.2 provides that a courier license applicant must file an application in a form provided by the Commission that sets forth the factors that the Commission shall consider in evaluating an application for a courier license. License applicants are evaluated considering factors similar to those in place for traditional lottery sales agents, as well as business experience operating a network, proposed internal audit and financial controls and technical standards and whether the applicant's business plan demonstrates that compliance with the Commission requirement is achievable. Section 5014.2 also allows for the issuance of a temporary license upon satisfactory completion of a criminal history check.

Section 5014.3 sets forth conditions and requirements of licensure for courier services. A courier service is required, as conditions of licensure, to display prominently on any platform a warning of the risk of being defrauded by lottery scams; to maintain a customer self-exclusion list; and to provide a mechanism for customers to register to exclude themselves from using the network. According to section 5014.3, such licensee is required to ensure that any customer placed on the self-exclusion list is prevented from purchasing tickets through the network, implement a daily customer purchase request limit of an amount approved by the Commission, maintain a secure database of all tickets requested through the network, maintain at a separate physical location a secure backup database and not use Commission or multi-state lottery trademarks except with the express approval of the Commission. Licensees are required to undergo independent third-party testing of their systems before operating in New York. A courier service licensee is required, as a condition of licensure, to indemnify, hold harmless, release and defend the State for claims relating to courier services, both from third parties and for possible damages to the Commission's systems. Section 5014.3 also requires licensees to obtain

insurance satisfactory to the Commission, which may include cyber liability insurance and errors and omissions insurance.

Section 5014.4 requires a licensed courier service to make available on such licensee's website and platform a true copy of the license issued by the Commission.

Section 5014.5 provides that a courier service must disclose which games the courier service intends to offer for sale and to seek Commission approval for any changes to such game offerings no later than 30 days prior to the effective date of such change.

Section 5014.6 provides that a courier customer that creates an account using the network of a courier service agrees to be bound by the Commission's regulations and to release and hold harmless the courier service from any liability related to a request for courier services that is not completed before the drawing cutoff and never results in the generation of tickets requested. Additionally, section 5014.6 provides that in the event a dispute occurs as to whether a ticket generated to complete a ticket purchase request in connection with a request for courier services placed through a network would have been a winning ticket had the ticket purchase occurred and no prize is paid, the Commission may, at the Commission's option, replace the ticket with a ticket equal in value to the price paid for the ticket that is the subject of the dispute, which remedy shall be the sole and exclusive remedy of the claimant against the Commission.

Section 5014.7 sets forth requirements for courier service networks, which include a method of restricting requests for courier services to customers physically located in the State of New York at the time of purchase, a method of restricting sales in areas designated by the Commission as prohibited sales areas, a method of informing customers of nearest lottery sales agent if requests for services cannot be completed by the drawing cutoff, a mechanism to provide users with complete ticket confirmation details, reporting of transaction details to the Commission, and the completion of unusual incident notifications to the Commission.

Section 5014.8 sets forth persons prohibited from opening an account or placing a request for courier services and requires licensees to implement procedures to prevent prohibited play. Such persons would include those under 18 years of age, employees, officers, directors or direct or indirect owners of the licensee and any spouse, child, brother or parent residing as a member of the same household in the principal place of abode of any employee, officer, director or direct or indirect owner of the licensee. Section 5014.8 also sets forth mandatory sanctions for allowing play by minors, including a $5,000 fine for a first violation, a $20,000 fine for a second violation within one year, a $25,000 fine for a third violation within one year and a fine of $25,000 for a fourth or subsequent violation within one year, along with such further action as the Commission deems appropriate.

Section 5014.9 requires each licensed courier service to submit its interactive systems, equipment and/or related components to an independent testing laboratory approved by the Commission to conduct specified testing at the licensee's expense.

Section 5014.10 requires that prior to placing a request for courier services through a network, a courier customer shall establish only one account. Section 5014.10 provides that a courier customer account may be funded through the use of a courier customer's credit or debit card, promotional or other credit issued by the licensee, or such other method as the Commission may approve. According to section 5014.10, courier services are required to establish and maintain trust accounts with balances sufficient to pay all money deposited for the purchase of tickets and courier customer prizes. A courier service shall make available within five business days funds a courier customer requests to withdraw from such courier customer's account.

Section 5014.11 provides that licensees must inform courier customers that no courier customer request for courier service and no receipt or acknowledgment of any such request constitutes evidence of a validly issued lottery ticket. A ticket, in order to be a validly issued ticket, shall be generated by a lottery terminal authorized by the Commission. Players must also be informed that a ticket is not deemed validly issued when a request for purchase is made of a courier service, when such a request is acknowledged or when a courier customer makes a payment to a courier service.

Section 5014.12 sets forth time requirements for the completion of ticket processing and the cutoff for accepting requests for courier service orders. For each request for courier services through a network placed during normal business hours, a courier service shall complete ticket processing by the sooner of 30 minutes before the relevant drawing or within 24 hours of the placement of the request. A courier service shall cease accepting requests for courier services no more than two hours and no less than a time period prior to the drawing cutoff, as specified by the Commission. In the event ticket processing is not completed prior to the drawing cutoff, section 5014.12 requires that a network shall cancel a request for courier services automatically and notify the courier customer and refund any payment, including any courier customer fee. Section 5014.12 also imposes ticket storage and retention requirements for licensed courier services.

Section 5014.13 provides that a courier service that purchases a lottery ticket on instruction from a courier customer holds such ticket in trust for such courier customer and acquires no ownership interest in such ticket, although a courier service may destroy a lottery ticket so long as such courier service complies with the ticket retention requirements of Section 5014.12.

Section 5014.14 imposes notification requirements in which a licensee must notify a courier customer on whose behalf a licensee has purchased a winning ticket. If a prize is $600 or less, Section 5014.14 requires that a courier service shall validate the winning ticket and redeem the prize on behalf of the courier customer. If a prize is more than $600, a courier service shall validate the winning ticket, attach the claim receipt and deliver the physical winning ticket to the courier customer and provide a courier customer who is a prizewinner electronically with a digitally completed claim form, tax withholding form and any other documentation required to redeem such prize. Section 5014.14 also requires a courier service to print the prizewinner's full name on the back of a ticket winning a prize of more than $600.

Section 5014.15 requires a licensee to submit to an annual compliance audit, at the licensee's expense, by an independent party approved by the Commission. Licensees are required to submit an annual anti-money laundering compliance finding statement. Section 5014.15 further provides that licensees are required to submit annual audited financial statements to the Commission.

Section 5014.16 requires licensees to submit for Commission approval the licensee's internal controls.

Section 5014.17 requires licensees to offer Commission discounts and marketing features, if the Commission so requires. A licensee's platform is required to be capable of promoting lottery games that may be available only at lottery sales agent locations, such as instant tickets. Section 5014.17 further provides that courier services are prohibited from making prizewinner announcements without Commission approval.

Section 5014.18 provides that licensed courier services are required to maintain a record of customer complaints and to make such complaints available to the Commission.

Section 5014.19 provides that a courier service may charge courier customers a reasonable service charge per request for courier services and that such charge shall not be deemed to be part of the lottery ticket price. If tickets are never generated to fulfill a request for courier services, section 5014.19 provides that the service charge shall be refunded.

Section 5014.20 governs the suspension and revocation of courier service licenses.

Sections 5001.8, 5001.22 and 5001.23 would be repealed as obsolete.

Technical corrections are made to Sections 5000.1, 5001.1, 5001.2, 5001.3, 5001.4, 5001.5, 5001.6, 5001.7, 5001.10, 5001.11, 5001.12, 5001.13, 5001.14, 5001.16, 5001.17, 5001.18, 5001.19, 5001.20, 5001.21, 5001.24, 5001.26, 5001.28, 5001.29, 5003.2, 5004.6, 5006.6, 5006.10, 5006.14, 5007.3, 5007.5, 5007.8, 5007.9, 5007.10, 5007.12, 5007.13, 5007.14, 5007.15, 5007.16, 5008.5, 5008.12, 5009.2, 5010.2, 5011.5, 5012.1, 5013.1, 5013.2 and 5013.3

The full text of this proposed rule is posted on the Commission's website at: www.gaming.ny.gov

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, PO Box 7500, Schenectady, New York 12301-7500, (518) 388-3332, email: gamingrules@gaming.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY: The New York State Gaming Commission ("Commission") is authorized to promulgate the proposed rules by Tax Law Sections 1601, 1604, 1605, 1607 and 1609 and by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2), 104(1) and 104(19).

Tax Law Section 1601 describes the purpose of Article 34 of the Tax Law as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604 authorizes the promulgation of rules governing the establishment and operation of such lottery. Tax Law Section 1605 authorizes the licensing of lottery sales agents and lottery vendors and sets forth criteria for licensing, while Tax Law Section 1607 establishes that a lottery license may be suspended or revoked. Tax Law Section 1609 provides that no ticket shall be sold by any person other than a licensed lottery sales agent.

Racing Law Section 103(2) provides that the Commission is responsible to operate and administer the state lottery for education. Racing Law Section 104(1) grants the Commission general jurisdiction over all gaming

activities within the State. Racing Law Section 104(19) authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. LEGISLATIVE OBJECTIVES: To permit the regulated use of lottery courier services to act as agents for customers in the customers' purchase of lottery tickets to generate more revenue for education and to implement requirements for the licensing of such courier services.

3. NEEDS AND BENEFITS: The proposed regulations would authorize a new category of lottery licensee, courier services, to take requests through a computer or mobile device for a customer to purchase lottery draw game tickets, purchase such tickets as agent for the customer and deliver purchased tickets to the customer or credit the customer with winnings cashed by the courier service as agent of the customer, if the winnings are under or at a $600 threshold.

Several companies are interested in offering such courier services in the State but have either foregone doing so at the insistence of the Commission or refrained from doing so in the absence of regulations establishing the activity's legality. The proposed regulations would ensure that lottery consumers and the integrity of the lottery are protected by authorizing the activity only so long as participants are duly licensed and compliant with rules designed to protect the interests of customers, the lottery and lottery retail sales agents. Prospective licensees believe that customers accustomed to procuring services through digital applications would be attracted to a courier service product and thereby enhance lottery revenue and aid to education by generating sales that would not otherwise occur.

The Commission would approve games to be offered, considering requirements of multi-state games. The regulations would allow a licensee to fulfill a customer request by allowing a courier service to buy the lottery ticket on the customer's behalf at another licensed lottery agent. Carrying on a business in which a person acts as an agent for another person in purchasing a lottery ticket would be prohibited unless duly licensed.

The proposed regulations provide that a lottery ticket would be issued and valid only when generated from an approved lottery terminal and assigned to the purchaser (and not when a customer places a request for courier services, requests a ticket purchase or receives confirmation of a placed request). The regulations require disclosure to customers of such ticket issuance rules, with the goal of making explicit that the customer would not acquire a ticket merely by virtue of completing a request for courier services, should the licensee fail to procure the actual ticket through the lottery's central system. Licensees would be required to provide to the Commission, before a drawing, comprehensive information in regard to which tickets were issued to which customers, which would give the Commission an audit trail of transactions and comply with multi-state game requirements.

A licensee would be required to employ a method to ensure that customers are located within New York State. A licensee would be required to provide the customer with email confirmations and an image of the purchased ticket. Tickets would be required to be stored securely in a safe or vault with minimum required specifications and retained for a period after the expiration of the applicable prize claiming period. The Commission would be permitted to set a cutoff time after which no requests could be placed for a drawing, in which case the licensee would be required to direct the customer to the nearest lottery sales agent location and would allow the customer to cancel a request if the customer does not wish to place the request for the next available drawing.

The regulations would set forth persons prohibited from opening an account or placing a request and require licensees to implement procedures to prevent prohibited play. Such persons would include those under 18 years of age, employees, officers, directors or direct or indirect owners of the licensee and certain relatives residing as a member of the same household of such persons. The regulations would set forth mandatory sanctions for allowing play by minors, including a $5,000 fine for a first violation, a $20,000 fine for a second violation within one year, a $25,000 fine for a third violation within one year and a fine of $25,000 for a fourth or subsequent violation within one year, along with such further action as the Commission deems appropriate.

The claims process for prizes of more than $600 would be similar as that for any other traditional lottery prizewinner: the claimant generally would claim in person at a lottery customer service center. The licensee would be required, in addition, to print the full name of customer on the back of a prizewinning ticket of more than $600, for added customer security. For prizes of $600 or less, the courier service would claim the prizes as agent for the prizewinner and credit the account of the prizewinner accordingly.

A licensee would be required to establish a trust account or accounts at a banking institution to hold customer funds, which would include deposits as well as prizes claimed on the customer's behalf.

A courier service would be permitted to charge a reasonable service charge to a customer and such fee would be deemed independent of a ticket price.

License applicants would be evaluated considering factors similar to those in place for traditional lottery sales agents, as well as business experience operating a network, proposed internal, audit and financial controls and technical standards and whether the applicant's business plan demonstrates that compliance is achievable. A temporary license could be issued upon satisfactory completion of a criminal history check. The regulations would allow for suspensions and revocations of licenses for factors applicable to traditional lottery sales agents.

A licensee would be required to indemnify, hold harmless, release and defend the State for claims relating to courier services, both from third parties and for possible damages to Commission systems.

A courier service would be required to display prominently on any platform a warning of the risk of being defrauded by lottery scams, maintain a customer self-exclusion list and provide a mechanism for customers to register to exclude themselves from using the network. A licensee would need to ensure that a self-excluded customer is prevented from purchasing tickets through the network, implement a daily customer purchase request limit of an amount approved by the Commission, maintain a secure database of all tickets requested through the network, maintain at a separate physical location a secure backup database and not use Commission or multi-state lottery trademarks except with the express approval of the Commission. Licensees would be required to undergo independent third-party testing of systems before operating.

The regulations would require licensees to submit for Commission approval the licensee's internal controls. Licensees would be required to offer Commission discounts and marketing features, if the Commission so requires. A licensee's platform would be required to be capable of promoting lottery games that may be available only at lottery sales agent locations, such as instant tickets. Licensees would be prohibited from making prizewinner announcements without Commission approval. Licensees would be required to maintain a record of customer complaints and make such complaints available to the Commission.

The regulations would require a licensee to undergo an annual compliance audit, at the licensee's expense, by an independent party approved by the Commission. Licensees would be required to submit an annual anti-money laundering compliance finding statement. Licensees would be required to submit annual audited financial statements. The regulations would require licensees to obtain insurance satisfactory to the Commission, which may include cyber liability insurance and errors and omissions insurance.

Customers of courier services would be required to agree to be bound by Commission's regulations, to release and hold harmless the courier service and the Commission from any liability related to a request for courier services to purchase tickets on behalf of the customer that the courier service does not complete before a drawing cutoff and that never results in the generation of the tickets requested through the network, and agree that if the Commission chooses to provide a replacement ticket, then such replacement would be the sole and exclusive remedy against the Commission.

The regulations would allow the Commission to require the provision of customer data and to prevent a licensee from selling or providing customer data to another.

4. COSTS:

(a) Costs to regulated parties for the implementation and continuing compliance with the rule: There is no fee for applying for courier service licensure. Required testing of interactive systems, equipment and related components would be at the licensee's expense. The required annual compliance audit would also be at the licensee's expense. Licensed courier services would need to pay the cost of third-party verification services to ensure that customers are of sufficient age to purchase lottery tickets. These costs are necessary to assure reliability of systems and protection of consumers without increasing Commission costs. The Commission cannot estimate the cost of complying with these requirements, as there are no courier services currently operating lawfully in the State and no similar regulatory regime exists elsewhere. Commission staff believes that compliance costs would be consistent with responsible management of a digital company offering products in a regulated environment.

(b) Costs to the regulating agency, the State, and local governments for the implementation and continued administration of the rule: Agency resources must be dedicated to the review of applications submitted by prospective courier services and to monitor compliance with regulatory requirements. No additional operating costs or staff are anticipated as a result of the proposed rules.

(c) The information, including the source or sources of such information, and methodology upon which the cost estimate is based: Cost estimates are based on the New York Lottery's experience regulating lottery games for more than 50 years.

5. LOCAL GOVERNMENT MANDATES: There are no local government mandates associated with the proposed rules.

6. PAPERWORK: The proposed rules would require the completion of

a license application. A licensed courier service would be required to have an independent third party certify the courier services compliance with the courier service regulations. A courier service would be required to provide the Commission with a copy of annual audited financial statements.

7. DUPLICATION: The proposed regulations do not duplicate any existing State or federal requirements of the same or similar subject matter.

8. ALTERNATIVES: Without the proposed regulations, courier services would not be permitted to operate lawfully in the State. Commission staff also considered whether to permit the sale of lottery tickets directly to customers through digital methods, but determined that a regulated courier service scheme would best balance the interests of customers, the lottery and lottery sales agents.

9. FEDERAL STANDARDS: The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE: The proposed rules will become effective upon adoption.

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

The proposed rules changes do not require a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement. There will be no adverse impact on small businesses, local governments, rural areas or jobs.

The proposed rules would authorize the placement of orders for lottery draw games through a mobile device, such as a smartphone, or other digital network. The Commission believes that the demographic most likely to use such technology, adults ages 18 to 25, is under-represented in sales at traditional business locations. Therefore, this rulemaking will result in increased lottery sales with minimal cannibalization of sales from existing retailers. No adverse impact on small businesses is anticipated.

The proposed rules will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on small businesses, local governments, rural areas or employment opportunities.

Department of Labor

EMERGENCY RULE MAKING

Home Care Aide Hours Worked

I.D. No. LAB-17-18-00005-E
Filing No. 357
Filing Date: 2018-04-05
Effective Date: 2018-04-05

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

Action taken: Amendment of sections 142-2.1(b), 142-3.1(b) and 142-3.7 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11) and 659; State Administrative Procedure Act, section 202(6)

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

Specific reasons underlying the finding of necessity: This emergency regulation is needed to preserve the status quo, prevent the collapse of the home care industry, and avoid institutionalizing patients who could be cared for at home, in the face of recent decisions by the State Appellate Divisions that treat meal periods and sleep time by home care aides who work shifts of 24 hours or more as hours worked for purposes of state (but not federal) minimum wage. As a result of those decisions, home care agencies may cease to provide home care aides thereby threatening the continued operation of this industry that employs and serves thousands of New Yorkers by providing vital, lifesaving services and averting the institutionalization of those who could otherwise be cared for at home. Because those decisions relied upon the Commissioner's regulation, and rejected the Department's opinion letters as inconsistent with that regulation, this emergency adoption amends the relevant regulations to codify the Commissioner's longstanding and consistent interpretations that such meal periods and sleep times do not constitute hours worked for purposes of minimum wage and overtime requirements.

Subject: Home Care Aide Hours Worked.

Purpose: To clarify that hours worked may exclude meal periods and sleep times for home care aides who work shifts of 24 hours or more.

Text of emergency rule: Sections 142-2.1, 142-3.1 and 143.7 of 12 NYCRR are amended to read as follows:

§ 142-2.1 Basic minimum hourly wage rate and allowances.

(a) The basic minimum hourly wage rate shall be, for each hour worked in:

(1) New York City for

(i) Large employers of eleven or more employees
$11.00 per hour on and after December 31, 2016;
$13.00 per hour on and after December 31, 2017;
$15.00 per hour on and after December 31, 2018;

(ii) Small employers of ten or fewer employees
$10.50 per hour on and after December 31, 2016;
$12.00 per hour on and after December 31, 2017;
$13.50 per hour on and after December 31, 2018;
$15.00 per hour on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)
$10.00 per hour on and after December 31, 2016;
$11.00 per hour on and after December 31, 2017;
$12.00 per hour on and after December 31, 2018;
$13.00 per hour on and after December 31, 2019;
$14.00 per hour on and after December 31, 2020;
$15.00 per hour on and after December 31, 2021,

(3) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)
$9.70 per hour on and after December 31, 2016;
$10.40 per hour on and after December 31, 2017;
$11.10 per hour on and after December 31, 2018;
$11.80 per hour on and after December 31, 2019;
$12.50 per hour on and after December 31, 2020.

(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors, such wage shall apply.

(b) The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee--one who lives on the premises of the employer--shall not be deemed to be permitted to work or required to be available for work: (1) during his or her normal sleeping hours solely because he is required to be on call during such hours; or (2) at any other time when he or she is free to leave the place of employment. *Notwithstanding the above, this subdivision shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for a home care aide who works a shift of 24 hours or more.*

§ 142-3.1 Basic minimum hourly wage rate.

(a) The basic minimum hourly wage rate shall be, for each hour worked in:

(1) New York City for

(i) Large employers of eleven or more employees
$11.00 per hour on and after December 31, 2016;
$13.00 per hour on and after December 31, 2017;
$15.00 per hour on and after December 31, 2018;

(ii) Small employers of ten or fewer employees
$10.50 per hour on and after December 31, 2016;
$12.00 per hour on and after December 31, 2017;
$13.50 per hour on and after December 31, 2018;
$15.00 per hour on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)
$10.00 per hour on and after December 31, 2016;
$11.00 per hour on and after December 31, 2017;
$12.00 per hour on and after December 31, 2018;
$13.00 per hour on and after December 31, 2019;
$14.00 per hour on and after December 31, 2020;
$15.00 per hour on and after December 31, 2021,

(3) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)
$9.70 per hour on and after December 31, 2016;
$10.40 per hour on and after December 31, 2017;
$11.10 per hour on and after December 31, 2018;
$11.80 per hour on and after December 31, 2019;
$12.50 per hour on and after December 31, 2020.

(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors. Such wage shall apply.

(b) The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential

employee--one who lives on the premises of the employer--shall not be deemed to be permitted to work or required to be available for work:

(1) during his or her normal sleeping hours solely because such employee is required to be on call during such hours; or

(2) at any other time when he or she is free to leave the place of employment.

Notwithstanding the above, this subdivision shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for a home care aide who works a shift of 24 hours or more.

§ 143.7 An hour.

The term an hour shall include each hour an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee–one who lives on the premises of the employer–shall not be deemed to be permitted to work or required to be available for work:

(a) during such employee's normal sleeping hours solely because he or she is required to be on call during such hours;

(b) at any other time when he or she is free to leave the place of employment.

Notwithstanding the above, the term an hour shall not be construed to include meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for a home care aide who works a shift of 24 hours or more.

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. LAB-17-18-00005-P, Issue of April 25, 2018. The emergency rule will expire June 3, 2018.

Text of rule and any required statements and analyses may be obtained from: Michael Paglialonga, NYS Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: comments@labor.ny.gov

Regulatory Impact Statement

Statutory Authority: State Administrative Procedure Act (SAPA) § 202(6) and Labor Law §§ 21(11) and 659.

Legislative Objectives: In enacting the Minimum Wage Law (Labor Law Article 19) in 1960 the Legislature mandated that the minimum wage be paid "for each hour worked" (Labor Law § 652(1)), without defining that phrase (Labor Law § 651), and delegated authority to the Commissioner of Labor ("Commissioner") to promulgate regulations as she "deems necessary or appropriate to carry out the purposes of this article and to safeguard the minimum wage" (L. 1960, Ch. 619, § 2, at Labor Law § 652(2) & (4)), to order "such modifications of or additions to any regulations as he may deem appropriate to effectuate the purposes of this article" (Labor Law § 659(2)), and to investigate hours worked (Labor Law §§ 660(b)(1) & 661). While Labor Law § 659(2) provides for rulemaking after a hearing, emergency adoption of this rulemaking is authorized "[n]otwithstanding any other law" by SAPA § 202(6).

The regulations to be amended. In 1960, based on the Legislature's delegation of authority, the Commissioner promulgated a new Minimum Wage Order for Miscellaneous Industries and Occupations (currently codified at 12 NYCRR Parts 142 and 143) ("the Wage Order"). The Wage Order contains regulations that defined the term "An hour" and provided that the requirement to pay minimum wages expressly covers time "an employee is permitted to work, or required to be available for work at a place prescribed by the employer." The Wage Order's regulations explicitly recognized that such time shall not be deemed to include sleeping time of a residential employee "solely because he or she is required to be on call during such hours" (see 12 NYCRR §§ 142-2.1(b), 142-3.1(b) & 143.7, originally promulgated as Minimum Wage Order 11 (1960), at II.A.1 (Hourly rate) and III.A.1 (Hourly rate), and Regulations (for exempt nonprofits) at IV.7 (A hour), and published at NYCRR, Supplement 15 (1963) at 344-64).

Legislative expansions to cover workers in the home. Over the years, the Legislature expanded the scope of the Minimum Wage Law as applied to domestic service and home companions. The original 1960 enactment expressly excluded any individual "employed or permitted to work (a) in domestic service in the home of the employer" (L. 1960, Ch. 691, § 2). In 1972, the Legislature removed that exclusion and replaced it with an exclusion for "service as a part time baby sitter in the home of the employer; or someone who lives in the home of the employer for the purpose of serving as a companion to a sick, convalescing or elderly person, and whose principal duties do not include housekeeping" (L. 1971, Ch. 1165, § 1). Finally, in 2010, the Legislature removed the exclusion for in-home companions as part of the Domestic Workers Bill of Rights (L. 2010, Ch. 481 § 8).

Administrative interpretations accompany statutory expansions. The above-referenced legislative expansions in 1972 and 2010 were each preceded by Commissioner's interpretations in the late 1960s and early 1980s that construed the statutory exclusions of domestic service and companions "in the home of the employer" to be inapplicable to domestic service and companions who were employed by agencies and placed in the home of a client. Such interpretations were affirmed by the Board of Standards and Appeals and its successor the Industrial Board of Appeals, and eventually by the Courts (see e.g., Settlement Home Care v. Industrial Board of Appeals, 151 A.D. 580 (2d Dept. 1989)). As the scope of minimum wage coverage expanded through administrative interpretations and legislative enactments, the Commissioner continued to interpret the statutory requirement to pay minimum wages for "each hour worked" to exclude sleep and meal periods of various categories of newly covered workers who were employed by agencies to work in the home of a client for extended periods of time. Those interpretations were set forth in investigators' manuals, formal guidelines, legal opinions, and Commissioner's determinations starting in the early 1970s, and were relied upon by the New York State Department of Health and by private agencies that employed home care aides. While the Commissioner did not amend the Wage Order's regulations to expressly codify those interpretations, she did amend it in 1986 to provide for overtime to be calculated "in the manner and methods provided for in and subject to the exemptions of" the federal Fair Labor Standards Act (FLSA) (12 NYCRR § § 142-2.2 & 142-3.2) and, in so doing, grew to increasingly look to, and rely upon, federal FLSA regulations interpreting hours worked (29 CFR Part 785) to address meal periods (29 CFR § § 785.18-19) and sleeping time (29 CFR §§ 785.20-23) so that hours worked were calculated consistently at the state and federal level for overtime (and other) purposes.

Needs and Benefits: This emergency regulation is necessary to preserve the status quo, prevent the collapse of the home care industry, and avoid institutionalizing patients who could be cared for at home, in the face of recent decisions by the State Appellate Divisions for the First and Second Departments that treat meal periods and sleep time by home care aides as hours worked for purposes of state (but not federal) minimum wage. Tokhtaman v. Human Care, LLC, Docket No. 3671 151268/16, 2017 NY Slip Op 02759 (1st Dept. Apr. 11, 2017), motion to reargue and for leave to appeal denied, 2017 NY Slip Op 82713(U) (1st Dept. Aug. 15, 2017); Andryeyeva v. New York Health Care, Inc., 2017 NY Slip Op 06421 (2nd Dept. Sept. 13, 2017); and Moreno v Future Care Health Servs., Inc., 2017 NY Slip Op 06439 (2nd Dept. Sept. 13, 2017). Absent a conflict between the First and Second Departments, and a final judgement in any of these cases that would make them ripe to be heard by the Court of Appeals, the Commissioner must take action now to avert an impending crisis. Emergency adoption of this regulation is necessary for the preservation of the public health, safety, and general welfare to ensure that home care aides will be available to provide care for, and avoid the institutionalization of, those who rely on home care.

The purpose and intent of this rulemaking is to narrowly codify the Commissioner's longstanding and consistent interpretation that compensable hours worked under the State Minimum Wage Law do not include meal periods and sleep time of home care aides who work shifts of 24 hours or more. While the Commissioner's interpretations regarding meal periods and sleep time have not been limited to home care aides, the current emergency is, and thus the necessarily limited nature of this emergency rulemaking should not be taken as evidence that the Commissioner interprets hours worked to include meal periods and sleep time for all others who work shifts of 24 hours or more. Rather, the Commissioner anticipates that regulations to codify the full scope of her interpretations regarding meal periods and sleep time can be appropriately pursued through the ordinary rulemaking process, after a public hearing and a full notice and comment period.

Costs: As this rule codifies existing Federal regulations and the Commissioner's interpretations, the Department estimates that there will be no costs to the regulated community, to the Department of Labor, or to state and local governments to implement this rulemaking.

Local Government Mandates: None. Federal, state and municipal governments and political subdivisions thereof are excluded from coverage under Part 142 by Labor Law §§ 651(5)(n) and 651(5)(last paragraph).

Paperwork: This rulemaking does not impact any reporting requirements currently required in either statute or regulation.

Duplication: This rulemaking does not duplicate, overlap, or conflict with any other state or federal requirements.

Alternatives: There were no significant alternatives considered.

Federal Standards: This rule keeps New York State in conformity with existing Federal standards involving working time contained in Federal Regulations 29 C.F.R. Part 785, as applied to meal periods and sleep time for home care aides who work shifts of 24 hours or more. There are no other federal standards relating to this rule.

Compliance Schedule: This emergency rulemaking shall become effective upon filing with the Department of State.

Regulatory Flexibility Analysis

Effect of Rule: The purpose and intent of this emergency rulemaking is to narrowly codify the Commissioner's longstanding and consistent interpretation of Article 19 of the Labor Law and to make clear that the amended regulations shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the federal minimum wage laws and regulations for home care aides who work shifts of 24 hours or more. The Department anticipates this will have a positive impact on small businesses as it will eliminate any instability introduced by decisions recently issued by the State Appellate Divisions. See Tokhtaman v. Human Care, LLC, Docket No. 3671 151268/16, 2017 NY Slip Op 02759 (1st Dept. Apr. 11, 2017), motion to reargue and for leave to appeal denied, 2017 NY Slip Op 82713(U) (1st Dept. Aug. 15, 2017); Andryeyeva v. New York Health Care, Inc., 2017 NY Slip Op 06421 (2nd Dept. Sept. 13, 2017); and Moreno v Future Care Health Servs., Inc., 2017 NY Slip Op 06439 (2nd Dept. Sept. 13, 2017).

Compliance Requirements: Small businesses and local governments will not have to undertake any new reporting, recordkeeping, or other affirmative act in order to comply with this regulation.

Professional Services: No professional services would be required to effectuate the purposes of this regulation.

Compliance Costs: As this regulation codifies existing administrative interpretations relied upon by regulators and employers, the Department estimates that there will be no costs to the small businesses or local governments to implement this regulation.

Economic and Technological Feasibility: The regulation does not require any use of technology to comply.

Minimizing Adverse Impact: The Department does not anticipate that this regulation will adversely impact small businesses or local governments. Since no adverse impact to small businesses or local governments will be realized, it was unnecessary for the Department to consider approaches for minimizing adverse economic impacts as suggested in State Administrative Procedure Act § 202-b(1).

Small Business and Local Government Participation: The Department does not anticipate that this rule will have an adverse economic impact upon small businesses or local governments, nor will it impose new reporting, recordkeeping, or other compliance requirements upon them. Nevertheless, the Department will ensure that small businesses and local governments have an opportunity to participate in the rulemaking process. In connection with a final revision to the regulation, the Department will elicit input from small businesses and local governments during the public comment period, and through a publicly scheduled hearing in accordance with Labor Law §§ 659 and 656.

Initial review of the rule pursuant to SAPA § 207: Initial review of this regulation shall occur no later than the third calendar year in which it is adopted.

Rural Area Flexibility Analysis

Types and estimated numbers of rural areas: The Department anticipates that this regulation will have a positive or neutral impact upon all areas of the state; there is no adverse impact anticipated upon any rural area of the state resulting from adoption of this regulation.

Reporting, recordkeeping; and other compliance requirements: This regulation will not impact reporting, recordkeeping or other compliance requirements.

Professional services: No professional services will be required to comply with this regulation.

Costs: As this regulation codifies the Commissioner's longstanding interpretation of Article 19 of the Labor Law, consistent with federal law and regulations, the Department estimates that there will be no new or additional costs to rural areas to implement this regulation.

Minimizing adverse impact: The Department does not anticipate that this regulation will have an adverse impact upon any region of the state. As such, different requirements for rural areas were not necessary.

Rural area participation: The Department does not anticipate that the regulation will have an adverse economic impact upon rural areas nor will it impose new reporting, recordkeeping, or other compliance requirements. Nevertheless, the Department will ensure that rural areas in the state have an opportunity to participate in the rulemaking process. In connection with a final revision to the regulation, the Department will elicit input from rural areas of the state during the public comment period, and through a publicly scheduled hearing in accordance with Labor Law §§ 659 and 656.

Job Impact Statement

Nature of Impact: The Department of Labor (hereinafter "Department") projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this emergency rulemaking. Rather, this regulation will help to limit or eliminate any negative impact on jobs from recent court decisions affecting the home care industry. This regulation amends existing regulations to codify the Commissioner's longstanding and consistent interpretation of Article 19 of the Labor Law and clarify that the amended regulations shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under federal minimum wage laws and regulations for home care aides who work shifts of 24 hours or more. The nature and purpose of this regulation is such that it will not have an adverse impact on jobs or employment opportunities.

Categories and numbers affected: The Department does not anticipate that this regulation will have an adverse impact on jobs or employment opportunities in any category of employment. This regulation will help to ensure the stability of the jobs of home care workers who work shifts of 24 hours or more in New York State. According to the Department's Division of Research and Statistics, there are an estimated 330,650 home care aides employed across the state.

Regions of adverse impact: The Department does not anticipate that this regulation will have an adverse impact upon jobs or employment opportunities statewide or in any particular region of the state.

Minimizing adverse impact: Since the Department does not anticipate any adverse impact upon jobs or employment opportunities resulting from this regulation, no measures to minimize any unnecessary adverse impact on existing jobs or to promote the development of new employment opportunities are required.

Self-employment opportunities: The Department does not foresee a measureable impact upon opportunities for self-employment resulting from adoption of this regulation.

Initial review of the rule pursuant to SAPA § 207: Initial review of this regulation shall occur no later than the third calendar year in which it is adopted.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Hours Worked, 24-Hour Shifts

I.D. No. LAB-17-18-00005-P

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

Proposed Action: Amendment of sections 142-2.1(b), 142-3.1(b) and 142-3.7 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11) and 659

Subject: Hours Worked, 24-Hour Shifts.

Purpose: To clarify that hours worked may exclude meal periods and sleep times for employees who work shifts of 24 hours or more.

Public hearing(s) will be held at: 11:00 a.m., July 11, 2018 at Department of Labor, 55 Hanson Place, Brooklyn, NY.

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

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

Text of proposed rule: Sections 142-2.1, 142-3.1 and 143.7 of 12 NYCRR are amended to read as follows:

§ 142-2.1 Basic minimum hourly wage rate and allowances.

(a) The basic minimum hourly wage rate shall be, for each hour worked in:

(1) New York City for

(i) Large employers of eleven or more employees
$11.00 per hour on and after December 31, 2016;
$13.00 per hour on and after December 31, 2017;
$15.00 per hour on and after December 31, 2018;

(ii) Small employers of ten or fewer employees
$10.50 per hour on and after December 31, 2016;
$12.00 per hour on and after December 31, 2017;
$13.50 per hour on and after December 31, 2018;
$15.00 per hour on and after December 31, 2019;

(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)

$10.00 per hour on and after December 31, 2016;
$11.00 per hour on and after December 31, 2017;
$12.00 per hour on and after December 31, 2018;
$13.00 per hour on and after December 31, 2019;

$14.00 per hour on and after December 31, 2020;
$15.00 per hour on and after December 31, 2021;
(3) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)
$9.70 per hour on and after December 31, 2016;
$10.40 per hour on and after December 31, 2017;
$11.10 per hour on and after December 31, 2018;
$11.80 per hour on and after December 31, 2019;
$12.50 per hour on and after December 31, 2020.
(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors, such wage shall apply.
(b) The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee--one who lives on the premises of the employer–shall not be deemed to be permitted to work or required to be available for work: (1) during his or her normal sleeping hours solely because he is required to be on call during such hours; or (2) at any other time when he or she is free to leave the place of employment. *Notwithstanding the above, this subdivision shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for an employee who works a shift of 24 hours or more.*
§ 142-3.1 Basic minimum hourly wage rate.
(a) The basic minimum hourly wage rate shall be, for each hour worked in:
(1) New York City for
(i) Large employers of eleven or more employees
$11.00 per hour on and after December 31, 2016;
$13.00 per hour on and after December 31, 2017;
$15.00 per hour on and after December 31, 2018;
(ii) Small employers of ten or fewer employees
$10.50 per hour on and after December 31, 2016;
$12.00 per hour on and after December 31, 2017;
$13.50 per hour on and after December 31, 2018;
$15.00 per hour on and after December 31, 2019;
(2) Remainder of downstate (Nassau, Suffolk and Westchester counties)
$10.00 per hour on and after December 31, 2016;
$11.00 per hour on and after December 31, 2017;
$12.00 per hour on and after December 31, 2018;
$13.00 per hour on and after December 31, 2019;
$14.00 per hour on and after December 31, 2020;
$15.00 per hour on and after December 31, 2021;
(3) Remainder of state (outside of New York City and Nassau, Suffolk and Westchester counties)
$9.70 per hour on and after December 31, 2016;
$10.40 per hour on and after December 31, 2017;
$11.10 per hour on and after December 31, 2018;
$11.80 per hour on and after December 31, 2019;
$12.50 per hour on and after December 31, 2020.
(4) If a higher wage is established by Federal law pursuant to 29 U.S.C. section 206 or its successors. Such wage shall apply.
(b) The minimum wage shall be paid for the time an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee--one who lives on the premises of the employer--shall not be deemed to be permitted to work or required to be available for work:
(1) during his or her normal sleeping hours solely because such employee is required to be on call during such hours; or
(2) at any other time when he or she is free to leave the place of employment.
Notwithstanding the above, this subdivision shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for an employee who works a shift of 24 hours or more.
§ 143.7 An hour.
The term an hour shall include each hour an employee is permitted to work, or is required to be available for work at a place prescribed by the employer, and shall include time spent in traveling to the extent that such traveling is part of the duties of the employee. However, a residential employee–one who lives on the premises of the employer–shall not be deemed to be permitted to work or required to be available for work:
(a) during such employee's normal sleeping hours solely because he or she is required to be on call during such hours;
(b) at any other time when he or she is free to leave the place of employment.

Notwithstanding the above, the term an hour shall not be construed to include meal periods and sleep times that are excluded from hours worked under the Fair Labor Standards Act of 1938, as amended, in accordance with sections 785.19 and 785.22 of 29 C.F.R. for an employee who works a shift of 24 hours or more.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Paglialonga, NYS Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: comments@labor.ny.gov

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

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

Regulatory Impact Statement

Statutory Authority: Labor Law §§ 21(11) and 659.

Legislative Objectives: In enacting the Minimum Wage Law (Labor Law Article 19) in 1960 the Legislature mandated that the minimum wage be paid "for each hour worked" (Labor Law § 652(1)), without defining that phrase (Labor Law § 651), and delegated authority to the Commissioner of Labor ("Commissioner") to promulgate regulations as she "deems necessary or appropriate to carry out the purposes of this article and to safeguard the minimum wage" (L. 1960, Ch. 619, § 2, at Labor Law § 652(2) & (4)), to order "such modifications of or additions to any regulations as he may deem appropriate to effectuate the purposes of this article" (Labor Law § 659(2)), and to investigate hours worked (Labor Law §§ 660(b)(1) & 661).

The regulations to be amended. In 1960, based on the Legislature's delegation of authority, the Commissioner promulgated a new Minimum Wage Order for Miscellaneous Industries and Occupations (currently codified at 12 NYCRR Parts 142 and 143) ("the Wage Order"). The Wage Order contains regulations that defined the term "An hour" and provided that the requirement to pay minimum wages expressly covers time "an employee is permitted to work, or required to be available for work at a place prescribed by the employer." The Wage Order's regulations explicitly recognized that such time shall not be deemed to include sleeping time of a residential employee "solely because he or she is required to be on call during such hours" (see 12 NYCRR § § 142-2.1(b), 142-3.1(b) & 143.7, originally promulgated as Minimum Wage Order 11 (1960), at II.A.1 (Hourly rate) and III.A.1 (Hourly rate), and Regulations (for exempt nonprofits) at IV.7 (A hour), and published at NYCRR, Supplement 15 (1963) at 344-64).

Legislative expansions to cover workers in the home. Over the years, the Legislature expanded the scope of the Minimum Wage Law as applied to domestic service and home companions. The original 1960 enactment expressly excluded any individual "employed or permitted to work (a) in domestic service in the home of the employer" (L. 1960, Ch. 691, § 2). In 1972, the Legislature removed that exclusion and replaced it with an exclusion for "service as a part time baby sitter in the home of the employer; or someone who lives in the home of the employer for the purpose of serving as a companion to a sick, convalescing or elderly person, and whose principal duties do not include housekeeping" (L. 1971, Ch. 1165, § 1). Finally, in 2010, the Legislature removed the exclusion for in-home companions as part of the Domestic Workers Bill of Rights (L. 2010, Ch. 481 § 8).

Administrative interpretations accompany statutory expansions. The above-referenced legislative expansions in 1972 and 2010 were each preceded by Commissioner's interpretations in the late 1960s and early 1980s that construed the statutory exclusions of domestic service and companions "in the home of the employer" to be inapplicable to domestic service and companions who were employed by agencies and placed in the home of a client. Such interpretations were affirmed by the Board of Standards and Appeals and its successor the Industrial Board of Appeals, and eventually by the Courts (see e.g., Settlement Home Care v. Industrial Board of Appeals, 151 A.D. 580 (2d Dept. 1989)). As the scope of minimum wage coverage expanded through administrative interpretations and legislative enactments, the Commissioner continued to interpret the statutory requirement to pay minimum wages for "each hour worked" to exclude sleep and meal periods of various categories of newly covered workers who were employed by agencies to work in the home of a client for extended periods of time. Those interpretations were set forth in investigators' manuals, formal guidelines, legal opinions, and Commissioner's determinations starting in the early 1970s, and were relied upon by the New York State Department of Health and by private agencies that employed home care aides. While the Commissioner did not amend the Wage Order's regulations to expressly codify those interpretations, she did amend it in 1986 to provide for overtime to be calculated "in the manner and methods provided for in and subject to the exemptions of" the federal Fair Labor Standards Act (FLSA) (12 NYCRR §§ 142-2.2 & 142-3.2) and, in so doing, grew to increasingly look to, and rely upon, federal FLSA regulations interpreting hours worked (29 CFR Part 785) to address meal

periods (29 CFR §§ 785.18-19) and sleeping time (29 CFR §§ 785.20-23) so that hours worked were calculated consistently at the state and federal level for overtime (and other) purposes.

Needs and Benefits: This regulation is necessary to preserve the status quo in the face of recent decisions by the State Appellate Divisions for the First and Second Departments that treat meal periods and sleep time by employees as hours worked for purposes of state (but not federal) minimum wage. Tokhtaman v. Human Care, LLC, Docket No. 3671 151268/16, 2017 NY Slip Op 02759 (1st Dept. Apr. 11, 2017), motion to reargue and for leave to appeal denied, 2017 NY Slip Op 82713(U) (1st Dept. Aug. 15, 2017); Andryeyeva v. New York Health Care, Inc., 2017 NY Slip Op 06421 (2nd Dept. Sept. 13, 2017), leave to appeal granted (Mar. 7, 2018); and Moreno v Future Care Health Servs., Inc., 2017 NY Slip Op 06439 (2nd Dept. Sept. 13, 2017), leave to appeal granted (Mar. 7, 2018). The purpose and intent of this rulemaking is to narrowly codify the Commissioner's longstanding and consistent interpretation that compensable hours worked under the State Minimum Wage Law do not include meal periods and sleep time of employees who work shifts of 24 hours or more.

Costs: As this rule codifies existing Federal regulations and the Commissioner's interpretations, the Department estimates that there will be no costs to the regulated community, to the Department of Labor, or to state and local governments to implement this rulemaking.

Local Government Mandate: None. Federal, state and municipal governments and political subdivisions thereof are excluded from coverage under Part 142 by Labor Law §§ 651(5)(n) and 651(5)(last paragraph).

Paperwork: This rulemaking does not impact any reporting requirements currently required in either statute or regulation.

Duplication: This rulemaking does not duplicate, overlap, or conflict with any other state or federal requirements.

Alternatives: There were no significant alternatives considered.

Federal Standards: This rule keeps New York State in conformity with existing Federal standards involving working time contained in Federal Regulations 29 C.F.R. Part 785, as applied to meal periods and sleep time for employees who work shifts of 24 hours or more. There are no other federal standards relating to this rule.

Compliance Schedule: This rulemaking shall become effective upon the publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule: The purpose and intent of this rulemaking is to narrowly codify the Commissioner's longstanding and consistent interpretation of Article 19 of the Labor Law and to make clear that the amended regulations shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under the federal minimum wage laws and regulations for employees who work shifts of 24 hours or more. The Department anticipates this will have a positive impact on small businesses as it will eliminate any instability introduced by decisions recently issued by the State Appellate Divisions. See Tokhtaman v. Human Care, LLC, Docket No. 3671 151268/16, 2017 NY Slip Op 02759 (1st Dept. Apr. 11, 2017), motion to reargue and for leave to appeal denied, 2017 NY Slip Op 82713(U) (1st Dept. Aug. 15, 2017); Andryeyeva v. New York Health Care, Inc., 2017 NY Slip Op 06421 (2nd Dept. Sept. 13, 2017), leave to appeal granted (Mar. 7, 2018); and Moreno v Future Care Health Servs., Inc., 2017 NY Slip Op 06439 (2nd Dept. Sept. 13, 2017), leave to appeal granted (Mar. 7. 2018).

Compliance Requirements: Small businesses and local governments will not have to undertake any new reporting, recordkeeping, or other affirmative act in order to comply with this regulation.

Professional Services: No professional services would be required to effectuate the purposes of this regulation.

Compliance Costs: As this regulation codifies existing administrative interpretations relied upon by regulators and employers, the Department estimates that there will be no costs to the small businesses or local governments to implement this regulation.

Economic and Technological Feasibility: The regulation does not require any use of technology to comply.

Minimizing Adverse Impact: The Department does not anticipate that this regulation will adversely impact small businesses or local governments. Since no adverse impact to small businesses or local governments will be realized, it was unnecessary for the Department to consider approaches for minimizing adverse economic impacts as suggested in State Administrative Procedure Act § 202-b(1).

Small Business and Local Government Participation: The Department does not anticipate that this rule will have an adverse economic impact upon small businesses or local governments, nor will it impose new reporting, recordkeeping, or other compliance requirements upon them. Nevertheless, the Department will ensure that small businesses and local governments have an opportunity to participate in the rulemaking process. The Department will elicit input from small businesses and local governments during the public comment period, and through the publicly scheduled hearing in accordance with Labor Law §§ 659 and 656.

Initial review of the rule pursuant to SAPA § 207: Initial review of this regulation shall occur no later than the third calendar year in which it is adopted.

Rural Area Flexibility Analysis

Types and estimated numbers of rural areas: The Department anticipates that this regulation will have a positive or neutral impact upon all areas of the state; there is no adverse impact anticipated upon any rural area of the state resulting from adoption of this regulation.

Reporting, recordkeeping and other compliance requirements: This regulation will not impact reporting, recordkeeping or other compliance requirements.

Professional services: No professional services will be required to comply with this regulation.

Costs: As this regulation codifies the Commissioner's longstanding interpretation of Article 19 of the Labor Law, consistent with federal law and regulations, the Department estimates that there will be no new or additional costs to rural areas to implement this regulation.

Minimizing adverse impact: The Department does not anticipate that this regulation will have an adverse impact upon any region of the state. As such, different requirements for rural areas were not necessary.

Rural area participation: The Department does not anticipate that the regulation will have an adverse economic impact upon rural areas nor will it impose new reporting, recordkeeping, or other compliance requirements. Nevertheless, the Department will ensure that rural areas in the state have an opportunity to participate in the rulemaking process. The Department is eliciting input from rural areas of the state during the public comment period, and through the publicly scheduled hearing in accordance with Labor Law §§ 659 and 656.

Job Impact Statement

Nature of Impact: The Department of Labor (hereinafter "Department") projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this rulemaking. Rather, this regulation will help to limit or eliminate any negative impact on jobs from recent court decisions affecting employees who work shifts of 24 hours or more. This regulation amends existing regulations to codify the Commissioner's longstanding and consistent interpretation of Article 19 of the Labor Law and clarify that the amended regulations shall not be construed to require that the minimum wage be paid for meal periods and sleep times that are excluded from hours worked under federal minimum wage laws and regulations for employees who work shifts of 24 hours or more. The nature and purpose of this regulation is such that it will not have an adverse impact on jobs or employment opportunities.

Categories and numbers affected: The Department does not anticipate that this regulation will have an adverse impact on jobs or employment opportunities in any category of employment. This regulation will help to ensure the stability of the jobs of employees who work shifts of 24 hours or more in New York State.

Regions of adverse impact: The Department does not anticipate that this regulation will have an adverse impact upon jobs or employment opportunities statewide or in any particular region of the state.

Minimizing adverse impact: Since the Department does not anticipate any adverse impact upon jobs or employment opportunities resulting from this regulation, no measures to minimize any unnecessary adverse impact on existing jobs or to promote the development of new employment opportunities are required.

Self-employment opportunities: The Department does not foresee a measureable impact upon opportunities for self-employment resulting from adoption of this regulation.

Initial review of the rule pursuant to SAPA § 207: Initial review of this regulation shall occur no later than the third calendar year in which it is adopted.

Office for People with Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Care Coordination Organizations

I.D. No. PDD-17-18-00001-EP
Filing No. 356
Filing Date: 2018-04-04
Effective Date: 2018-04-04

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

Proposed Action: Amendment of Subpart 635-11 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 13.15(a) and 16.00; Social Services Law, subdivision 365-l

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

Specific reasons underlying the finding of necessity: The emergency adoption of amendments that allow individuals to be enrolled into Care Coordination Organizations (CCO), through certain parties, in situations where there is no other person to make that election for them, is necessary to protect the health, safety, and welfare of individuals who are eligible to receive enhanced care coordination services in the OPWDD system. CCOs provide two care coordination services for individuals who receive OPWDD-certified Home and Community Based Services (HCBS). The first service is a federally-authorized Medicaid Health Home service, which provides enhanced care coordination for individuals who want coordination of health and developmental disability services funded by Medicaid. Individuals who just want coordination their OPWDD-certified HCBS services may enroll in the Basic HCBS Plan Support services offered by the CCO. Persons who are unable to enroll themselves in a CCO will be unfairly precluded from participation OPWDD-certified HCBS services, as care management is required to receive these services, and CCOs will assume the care management role for individuals receiving these services.

The emergency amendments amend Title 14 NYCRR Subpart 635-11 to allow individuals, who lack capacity and a guardian, the ability to be enrolled in a CCO. The regulations must be filed on an emergency basis to ensure that individuals eligible for CCOs are not unfairly precluded from participation in cross-system care coordination that will meet their needs. Also, it is necessary for individuals to be enrolled into CCOs as the OPWDD system is shifting to the new model of care coordination and will be discontinuing Medicaid Service Coordination and Plan of Care Support Services, which are the services that currently serve individuals receiving OPWDD-certified HCBS. Individuals must be enrolled in a care coordination service to be eligible for HCBS services. In addition to the desire to provide enhanced care coordination services for individuals in the OPWDD system, this transition is necessary in order for the OPWDD system to comply with federal conflict of interest regulations and standards set by the Centers for Medicare and Medicaid Services.

Subject: Care Coordination Organizations.

Purpose: To allow individuals to be enrolled in a CCO when individuals are unable to enroll themselves.

Text of emergency/proposed rule: • Subpart 635-11 is amended as follows:

• Enrollment in Medicare Prescription Drug Plans*, Care Coordination Organizations,* and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD)

• New subparagraph 635-11.1(a)(1)(iii) is added as follows:

(iii) services provided by a Care Coordination Organization (CCO) designated by the New York State Department of Health pursuant to section 365-l of the Social Services Law; or

• Existing paragraph 635-11.1(a)(2) is amended as follows:

(2) who can pursue grievances, complaints, exceptions and appeals in such plans *or services*.

• New paragraph 635-11.1(b)(1) is added, and all remaining paragraphs are renumbered accordingly.

(1) Act in the CCO review process means doing any of the following within a CCO:

(i) filing a grievance;

(ii) submitting a complaint to the quality improvement organization or to federal or state government regulatory agencies;

(iii) filing and requesting appeals and dealing with, or participating in, any part of the appeals process;

• New paragraph 635-11.1(b)(4) is added, and all remaining paragraphs are renumbered accordingly.

(4) CCO means a Care Coordination Organization which is designated by the New York State Department of Health, in conjunction with the Office for People With Developmental Disabilities, pursuant to section 365-l of the Social Services Law to provide Medicaid health home care coordination services or Basic HCBS Plan Support.

• Existing subparagraph 635-11.1(b)(5)(i) is amended as follows:

(i) a PDP; [and/or]

• Existing subparagraph 635-11.1(b)(5)(ii) is amended as follows:

(ii) a FIDA-IDD plan[.]*; or*

• New subparagraph 635-11.1(b)(5)(iii) is added as follows:

(iii) a CCO.

• New section 635-11.8 is added as follows:

Section 635-11.8. CCO enrollment and reviews for persons residing in a residential facility operated or certified by OPWDD or a family care home

(a) If a person has the ability to choose a CCO on his or her own, or with the assistance of supported decision making, the person may

(1) enroll himself or herself in a CCO Plan;

(2) act in the CCO review process;

(3) disenroll himself or herself from a CCO;

(4) appoint another party to take actions on his or her behalf; or

(5) seek assistance with the above decisions and actions.

(b) If a person lacks the ability to enroll in a CCO, disenroll from a CCO, or act in the CCO review process, but has a guardian lawfully empowered to enroll him or her in a CCO, the guardian may take any of the actions enumerated in subdivision (a) of this Subpart.

(c) If a person lacks the ability to choose a CCO and does not have a guardian lawfully empowered to enroll him or her in a CCO, then any of the following parties, in the order stated, may take any of the actions enumerated in subdivision (a) of this subpart:

(1) an actively involved (see section 633.99 of this Title) spouse;

(2) an actively involved parent;

(3) an actively involved adult child;

(4) an actively involved adult sibling;

(5) an actively involved adult family member;

(6) the Consumer Advisory Board for the Willowbrook Class members, but only for members of the Willowbrook Class;

(d) If the first surrogate on the list in subdivision (c) is not reasonably available and willing to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process, and is not expected to become reasonably available and willing to make an enrollment decision and enroll the individual in a CCO or act in the CCO review process, the surrogate who has the highest priority on the list and who is willing and available shall have the authority to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process.

(e) If a person lacks the ability to choose a CCO, does not have a guardian lawfully empowered to enroll him or her in a CCO, and there are no parties identified in (c) above, then the chief executive officer (CEO) (see section 635-99.1 of this Part) of the agency operating the person's residential facility or sponsoring the family care home, or a designee of the CEO, may take any of the actions enumerated in subdivision (a) of this subpart. For the purposes of this subsection only, if the person's residential facility is operated by OPWDD, the CEO of the agency is the director of the DDSOO that operates the residential facility.

(f) If a party specified in subdivisions (a) through (e) of this section, in the order so specified, makes a decision to enroll in a CCO; not to enroll in a CCO; or to disenroll from a CCO; that decision shall be considered the final decision of the affected individual and any party in a subordinate position, as specified in subdivisions (a) through (e) of this section, may not change that enrollment decision. The party that enrolls the individual shall also be the party authorized to act in the CCO review process.

(g) If the CEO enrolls the person in the CCO or acts in the CCO review process, he or she shall give written notice of such enrollment and/or action to (1) the person's correspondent or advocate, if one is available; (2) the person's Medicaid service coordinator, or other person identified as that person's care coordinator; (3) the DDRO director for the region encompassing the person's residence.

(h) For each individual eligible to enroll in a CCO, the individual's care management provider for OPWDD-certified services shall identify a decision-maker who has the authority to make enrollment decisions for the individual pursuant to this section. If there is no care management provider assigned to the individual at the time of the eligibility, the DDRO director for the region encompassing the person's current residence, or his or her designee, shall identify a decision-maker pursuant to this section.

(i) The care management provider or DDRO director shall notify the following parties of the decision-maker identified to make enrollment decisions:

(1) the identified decision-maker; and

(2) OPWDD, if necessary.

(j) The care management provider or DDRO director shall maintain documentation of the current decision-maker identified pursuant to this subsection, including documentation of attempts to reach unavailable individuals, and shall confirm the identification of the current decision maker as necessary, but at least annually.

• New section 635-11.9 is added as follows:

Section 635-11.9. CCO Enrollment and reviews for persons not residing in a residential facility or a family care home

(a) If a person has the ability to choose a CCO on his or her own, or with the assistance of supported decision making, the person may:

(1) enroll himself or herself in a CCO;

(2) act in the CCO review process;

(3) disenroll himself or herself from a CCO;

(4) appoint another party to take actions on his or her behalf; or

(5) seek assistance with the above decisions and actions.

(b) If a person lacks the ability to choose a CCO, but has a guardian lawfully empowered to enroll him or her in a CCO, the guardian may take any of the actions enumerated in subdivision (a) of this Subpart.

(c) If a person lacks the ability to choose a CCO and does not have a guardian lawfully empowered to enroll him or her in a CCO, then any of the following parties, in the order stated, may take any of the actions enumerated in subdivision (a) of this subpart:

(1) an actively involved (see section 633.99 of this Title) spouse;

(2) an actively involved parent;

(3) an actively involved adult child;

(4) an actively involved adult sibling;

(5) an actively involved adult family member;

(6) the Consumer Advisory Board for the Willowbrook Class members, but only for the members of the Willowbrook Class;

(d) If the first surrogate on the list in subdivision (c) is not reasonably available and willing to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process, and is not expected to become reasonably available and willing to make an enrollment decision and enroll the individual in a CCO or act in the CCO review process, the surrogate who has the highest priority on the list and who is willing and available shall have the authority to make enrollment decisions and enroll the individual in a CCO or act in the CCO review process.

(e) If a person lacks the ability to choose a CCO: does not have a guardian lawfully empowered to enroll him or her in a CCO; and there are no parties identified in (c) above, the DDRO director for the region encompassing the person's residence, or his or her designee may take any of the actions enumerated in subdivision (a) of this subpart. If the DDRO director or designee enrolls the person in the CCO, acts in the CCO review process, or disenrolls the individual from a CCO, he or she shall give written notice of such enrollment, disenrollment and/or action to the person's correspondent or advocate, if one is available.

(f) If a party specified in subdivisions (a) through (e) of this section, in the order so specified, makes a decision to enroll in a CCO; not to enroll in a CCO; or to disenroll from a CCO; that decision shall be considered the final decision of the affected individual and any party in a subordinate position, as specified in subdivisions (a) through (e) of this section, may not change that enrollment decision. The party that enrolls the individual shall also be the party authorized to act in the CCO review process.

(g) For each individual eligible to enroll in a CCO, the individual's care management provider for OPWDD-certified services shall identify a decision-maker who has the authority to make enrollment decisions for the individual pursuant to this section. If there is no care management provider assigned to the individual at the time of the eligibility, the DDRO director for the region encompassing the person's current residence, or his or her designee, shall identify a decision-maker pursuant to this section.

(h) The care management provider or DDRO director shall notify the following parties of the decision-maker identified to make enrollment decisions:

(1) the identified decision-maker; and

(2) OPWDD, if necessary.

(i) The care management provider or DDRO director shall maintain documentation of the current decision-maker identified pursuant to this subsection, including documentation of attempts to reach unavailable individuals, and shall confirm the identification of the current decision maker as necessary, but at least annually.

• A new Section 635-11.10 is added as follows:

Section 635-11.10. Other responsibilities and rights of CEOs and DDSOO and DDRO directors or designees regarding CCO enrollment and reviews

(a) No CEO or DDRO or DDSOO director or designee shall solicit, accept or receive from a CCO or Managed Care Plan operator, or an agent of the CCO or Managed Care Plan, for personal use or benefit (other than for the personal use or benefit of the person being enrolled), any payment, discount or other remuneration in consideration of, or as a result of, enrolling the person in a CCO or Managed Care Plan.

(b) No CEO or DDRO or DDSOO director or designee shall charge, accept or receive payment from the person, family or anyone else for enrolling the person in a CCO or Managed Care Plan, for providing advice and assistance in choosing a CCO or Managed Care Plan or for acting for the person in the CCO or Managed Care Plan review process.

(c) When a CEO or DDRO or DDSOO director or designee is authorized to act by this section or appointed to act in the CCO or Managed Care Plan review process for a person, the director or designee may appoint a party outside of the agency to act in the CCO or Managed Care Plan review process for the person.

(d) When a CEO or DDRO or DDSOO director or designee enrolls a person in a CCO or Managed Care Plan, disenrolls a person from a CCO or Managed Care Plan, or acts in the CCO or Managed Care Plan review process for a person he or she shall act based on the best interests of the person, and shall fully document the reasons for such enrollment decision or action.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 2, 2018.

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

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

Public comment will be received until: 60 days after publication of this notice.

Additional matter required by statute: 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.

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:

a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs, supports, and services in the areas of care, treatment, habilitation, rehabilitation, and other education and training of persons with developmental disabilities, as stated in the New York State (NYS) Mental Hygiene Law Section 13.07.

b. OPWDD has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the NYS Mental Hygiene Law Section 13.09(b).

c. OPWDD has the authority to plan, promote, establish, develop, coordinate, evaluate, and conduct programs and services for prevention, diagnosis, examination, care treatment, rehabilitation, training, and research for the benefit of individuals with developmental disabilities and has the authority to take all actions necessary, desirable, or proper to implement the purposes of the Mental Hygiene Law and to carry out the purposes and objectives of OPWDD within available funding, as stated in the NYS Mental Hygiene Law Section 13.15(a).

d. OPWDD has the statutory authority to adopt regulations concerned with the operation of programs and the provision of services, as stated in the NYS Mental Hygiene Law Section 16.00.

e. OPWDD, in conjunction with the New York State Department of Health, has the statutory authority to establish standards for the provision of health home services to Medicaid enrollees with chronic conditions, as stated in the NYS Social Services Law Subdivisions 365-l.

2. Legislative Objectives: The emergency/proposed regulations further legislative objectives embodied in sections 13.07, 13.09(b), 13.15(a) and 16.00 of the Mental Hygiene Law and 365-l of the NYS Social Services Law. The regulations authorize certain parties to enroll individuals with developmental disabilities in entities called Care Coordination Organizations (CCOs), designated by the New York State Department of Health, in conjunction with OPWDD, pursuant to section 365-l of the Social Services Law, when those individuals lack capacity to enroll themselves. CCOs provide two care coordination services for individuals with developmental disabilities, as that term is defined under Section 1.03(22) of the Mental Hygiene Law, who receive OPWDD-certified Home and Community Based Services (HCBS). The first service is a federally-authorized Medicaid Health Home service, which provides enhanced care coordination for individuals who want coordination of health and developmental disability services funded by Medicaid. Individuals who

just want coordination of their OPWDD-certified HCBS services may enroll in the Basic HCBS Plan Support services offered by the CCO.

3. Needs and Benefits: The emergency/proposed regulations amend Title 14 NYCRR Part 635-11 to allow individuals to be enrolled in a CCO, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity. Without such action, individuals who are unable to enroll themselves in a CCO will be unfairly precluded from participation OPWDD-certified HCBS services. This is because care management is required to receive these services, and the OPWDD system will be discontinuing current care management services, Medicaid Service Coordination and Plan of Care Support Services, in order to transition to the services offered by CCOs. In addition to the desire to provide enhanced care coordination services for individuals in the OPWDD system, this transition is necessary in order for the OPWDD system to comply with federal conflict of interest regulations and standards set by the Centers for Medicare and Medicaid Services.

The emergency/proposed regulations in 635-11.8 pertain to individuals who reside in a residential facility operated or certified by OPWDD, or a family care home. That section would allow a surrogate to enroll an individual in a CCO or to participate in the CCO review process, if that individual did not have the capacity to enroll himself or herself. The section sets forth a hierarchy of individuals that may serve as a surrogate for these purposes, which includes an actively involved spouse, parent, adult child, adult sibling, adult family member or the Consumer Advisory Board for the Willowbrook Class (for class members only). In all other situations, the CEO of the agency that operates the individual's residence may enroll an individual and act on their behalf in the CCO plan review process. For individuals residing in a facility operated by OPWDD, the CEO of the agency is deemed to be the director of the Developmental Disabilities State Operations Office that encompasses the location of the residence. This section also places notification requirements on a CEO that enrolls an individual in a CCO plan, and requires the care management provider for that individual's OPWDD-certified services to identify the appropriate decision-maker for the individual.

The emergency/proposed regulations in 635-11.9 pertain to those individuals not residing in an OPWDD-certified or operated residential facility or family care home. That section would also allow a surrogate to enroll an individual in a CCO or to participate in the CCO review process, if that individual did not have the capacity to enroll himself or herself. The section sets forth a hierarchy of individuals that may serve as a surrogate for these purposes, which includes an actively involved spouse, parent, adult child, adult sibling, adult family member, or the Consumer Advisory Board for the Willowbrook Class (for Class members only). In all other situations, the director of the OPWDD Developmental Disabilities Regional Office for the region in which the individual resides may enroll the individual and act on their behalf in the CCO review process. This section also requires the care management provider for that individual's OPWDD-certified services to identify the appropriate decision-maker for the individual.

The emergency/proposed regulations in 635-11.10 adds rights and responsibilities of CEOs, DDSOO and DDRO directors and designees regarding CCO plan enrollment and reviews.

4. Costs:

a. Costs to the Agency and to the State and its local governments:

There is no anticipated impact on Medicaid expenditures as a result of the emergency/proposed regulations. The regulations merely allow individuals to be enrolled in CCOs, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

These regulations will not have any fiscal impact on local governments, as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

There are no anticipated costs to OPWDD in its role as a provider of services to comply with the new requirements. The emergency/proposed regulations may result in cost savings because individuals affected by the regulations will not have to seek guardianship to participate in a CCO.

b. Costs to private regulated parties:

There are no anticipated costs to regulated providers to comply with the emergency/proposed regulations. The amendments merely allow individuals to be enrolled in a CCO, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: Providers will not experience an increase in paperwork as a result of the emergency/proposed regulations.

7. Duplication: The emergency/proposed regulations do not duplicate any existing State or Federal requirements on this topic.

8. Alternatives: OPWDD did not consider any other alternatives to the emergency/proposed regulations. The regulations are necessary to allow individuals to be enrolled in a CCO, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

9. Federal Standards: The emergency/proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: OPWDD is planning to adopt the emergency/proposed amendments as soon as possible within the timeframes mandated by the State Administrative Procedure Act. The proposed regulations were discussed with and reviewed by representatives of providers in advance of this proposal. OPWDD expects that providers will be in compliance with the emergency/proposed requirements at the time of their effective date.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses and local governments is not being submitted because these amendments will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses. There are no professional services, capital, or other compliance costs imposed on small businesses as a result of these amendments.

The emergency/proposed regulations amend Title 14 NYCRR Subpart 635-11 to allow individuals to be enrolled in a Care Coordination Organizations (CCO), through certain parties, in situations where there is no other person to make that election for them, such as lack of a guardian or incapacity. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers of small business and local governments.

Rural Area Flexibility Analysis

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

The emergency/proposed regulations amend Title 14 NYCRR Subpart 635-11 to allow individuals to be enrolled in a Care Coordination Organizations (CCO), through certain parties, in situations where there is no other person to make that election for them, such as lack of a guardian or incapacity. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers in rural areas and local governments.

Job Impact Statement

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

The emergency/proposed regulations amend Title 14 NYCRR Subpart 635-11 to allow individuals to be enrolled in a Care Coordination Organizations (CCO), through certain parties, in situations where there is no other person to make that election for them, such as lack of a guardian or incapacity. The amendments will not result in costs, including staffing costs, or new compliance requirements for providers and consequently, the amendments will not have a substantial impact on jobs or employment opportunities in New York State.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Submeter Electricity

I.D. No. PSC-17-18-00009-P

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

Proposed Action: The Commission is considering the petition of Harmony Mills Fallsview LLC to submeter electricity at 100 North Mohawk Street, Cohoes, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition to submeter electricity.

Purpose: To consider the petition of Harmony Mills Fallsview LLC to submeter electricity.

Substance of proposed rule: The Commission is considering the petition of Harmony Mills Fallsview LLC (Owner) filed on March 12, 2018, to submeter electricity at 100 North Mohawk Street, Cohoes, New York, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid. By petitioning for authorization to submeter electricity, Harmony Mills Fallsview LLC has requested authorization to take electric service from Niagara Mohawk Power Corporation and then distribute and meter that electricity to tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations at 16 NYCRR Part 96. The full text of the petition and the full record of the proceeding 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: 60 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.

(18-E-0146SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Use of Gas Metering Equipment

I.D. No. PSC-17-18-00010-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid, for use of the Honeywell AC-800TC gas meter.

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

Subject: Petition for use of gas metering equipment.

Purpose: To ensure that consumer bills are based on accurate measurements of gas usage.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid on March 22, 2018, seeking approval to use the Honeywell AC-800TC meter in gas metering applications. The Commission requires new meter types to be tested and their accuracy proven before they may be used to measure the gas usage of customers. The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may approve, modify or reject, 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: 60 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.

(18-G-0188SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Increase Demand and Energy Charges Under S.C. No. 3 and S.C. No. 4

I.D. No. PSC-17-18-00011-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 proposed tariff amendments, filed by the Village of Sherburne, to P.S.C. No. 1 — Electricity, to increase rates for S.C. No. 3 — General Service - Demand Metered and S.C. No. 4 — Large General Service customers.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Increase demand and energy charges under S.C. No. 3 and S.C. No. 4.

Purpose: To consider a proposal to protect existing electric customers from increased supply costs resulting from HDL customers.

Substance of proposed rule: The Commission is considering the proposed tariff amendments, filed by the Village of Sherburne on March 28, 2018, to P.S.C. No. 1 – Electricity, to revise its rates for Service Classification (S.C.) No. 3 – General Service – Demand Metered and S.C. No. 4 – Large General Service. The proposed revisions to S.C. No. 3 would increase the energy charge (from $0.0069 per kWh to $0.0089 per kWh) and reduce the demand charge (from $6.09 per kW to $5.57 per kW). The proposed revisions to S.C. No. 4 would increase the energy charge (from $0.0059 per kWh to $0.0170 per kWh) and reduce the demand charge (from $6.09 per kW to $2.19 per kW). The Village of Sherburne states that these changes are necessary to protect exiting municipal electric utility customers from increased supply costs resulting from high density load (HDL) customers. The proposed amendments have an effective date of July 17, 2018. The full text of the filing and the full record of the proceeding 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: 60 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.

(18-E-0197SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Residential Electric Vehicle Charging

I.D. No. PSC-17-18-00012-P

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

Proposed Action: The Commission is considering proposed tariff amendments, filed by New York State Electric & Gas Corporation, to P.S.C. No. 120 — Electric, to effectuate amendments to Public Service Law (PSL) section 66-o (Residential Electric Vehicle Charging).

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Residential Electric Vehicle Charging.

Purpose: To effectuate service enhancements mandated by State Legislation.

Substance of proposed rule: The Commission is considering the proposed tariff amendments, filed by New York State Electric and Gas Corporation (NYSEG) on March 30, 2018, to P.S.C. No. 120 – Electric, to address the

change to Public Service Law (PSL) § 66-o that was effectuated through Chapter 337 of the Laws of 2017. PSL § 66-o requires utilities to establish a residential tariff for the purpose of recharging an eligible plug-in electric vehicle (PEV). NYSEG proposes Special Provision (p) Plug-In Electric Vehicle within its residential time-of-use Service Classification No. 8 – Residential – Day Night Service, for customers with an eligible PEV. NYSEG proposes that customers may opt to take service under Special Provision (p) for their entire load or only for the load associated with the PEV charger, provided the customer installs a separate meter for charging its PEV. Customers that elect to take service for their entire load under Special Provision (p) and receives service for one full year after registering the electric vehicle with NYSEG, will be eligible to receive a one-time price guarantee for delivery service for a period of one-year and shall receive a credit following the one-year period for any difference between what the customer paid under Special Provision (p) and what the customer would have paid under its standard residential service. The proposed amendments have an effective date of September 15, 2018. The full text of the filing and the full record of the proceeding 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: 60 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.

(18-E-0206SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Residential Electric Vehicle Charging

I.D. No. PSC-17-18-00013-P

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

Proposed Action: The Commission is considering proposed tariff amendments, filed by Rochester Gas and Electric Corporation, to P.S.C. No. 19 — Electric, to effectuate amendments to Public Service Law (PSL) section 66-o (Residential Electric Vehicle Charging).

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Residential Electric Vehicle Charging.

Purpose: To effectuate service enhancements mandated by State Legislation.

Substance of proposed rule: The Commission is considering the proposed tariff amendments, filed by Rochester Gas and Electric (RG&E) on March 30, 2018, to P.S.C. No. 19 – Electric, to address the change to Public Service Law (PSL) § 66-o that was effectuated through Chapter 337 of the Laws of 2017. PSL § 66-o requires utilities to establish a residential tariff for the purpose of recharging an eligible plug-in electric vehicle (PEV). RG&E proposes Special Provision (11) Plug-In Electric Vehicles within its residential time-of-use Service Classification No. 4 – Residential Service – Time-of-Use Rate, for customers with an eligible PEV. RG&E proposes that customers may opt to take service under Special Provision (11) for their entire load or only for the load associated with the PEV charger, provided the customer installs a separate meter for charging its PEV. Customers that elect to take service for their entire load under Special Provision (11) and receives service for one full year after registering the electric vehicle with RG&E, will be eligible to receive a one-time price guarantee for delivery service for a period of one-year and shall receive a credit following the one-year period for any difference between what the customer paid under Special Provision (11) and what the customer would have paid under its standard residential service. The proposed amendments have an effective date of September 15, 2018. The full text of the filing and the full record of the proceeding 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: 60 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.

(18-E-0206SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Residential Electric Vehicle Charging

I.D. No. PSC-17-18-00014-P

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

Proposed Action: The Commission is considering proposed tariff amendments, filed by Central Hudson Gas & Electric Corporation, to P.S.C. No. 15 — Electricity, to effectuate amendments to Public Service Law (PSL) section 66-o (Residential Electric Vehicle Charging).

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Residential Electric Vehicle Charging.

Purpose: To effectuate service enhancements mandated by State Legislation.

Substance of proposed rule: The Commission is considering the proposed tariff amendments filed by Central Hudson Gas & Electric Corporation (Central Hudson) on March 29, 2018, to P.S.C. No. 15 – Electricity, to address the change to Public Service Law (PSL) § 66-o that was effectuated through Chapter 337 of the Laws of 2017. PSL § 66-o requires utilities to establish a residential tariff for recharging an eligible plug-in electric vehicle (PEV). Central Hudson proposes Special Provision 6.5 within its Service Classification (S.C.) No. 6 – Residential Time-of-Use Service for customers with an eligible PEV. Central Hudson proposes that customers who register an eligible plug-in electric vehicle with Central Hudson will receive a bill guarantee for a period of one-year commencing with the first meter reading after the customer registers the PEV with Central Hudson. The customer will receive a credit following the one-year period for any difference between what the customer paid under S.C. No. 6 and what the customer would have paid under its standard residential service. The proposed amendments have an effective date of October 1, 2018. The full text of the filing and the full record of the proceeding 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: 60 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.

(18-E-0206SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Implement High Density Load Customer Program – Individual Service Agreements

I.D. No. PSC-17-18-00015-P

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

Proposed Action: The Commission is considering a proposal filed by Massena Electric Department to implement High Density Load Customer Program Under Service Classification No. 8 — Individual Service Agreements in its Electric Tariff Schedule, P.S.C. No. 2 — Electricity.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Implement High Density Load Customer Program – Individual Service Agreements.

Purpose: To consider allowing Massena to offer electric service to high density load customers while passing costs to those customers.

Substance of proposed rule: The Public Service Commission (Commission) is considering a proposal filed by Massena Electric Department (MED) on April 6, 2018, to modify its electric tariff schedule, P.S.C. No. 2. Massena's proposed revisions will allow high density load (HDL) customers to qualify for service under Individual Service Agreements with the MED and will clarify that HDL customers receiving service under MED's new High Density Load Customer Program may be subject to additional charges. HDL customers are defined "customers whose energy densities are greater than 250 kWh per square feet per year and who have a minimum load of 300 kW and have operational characteristics that would benefit MED because of location of the customer on the MED system, ability to curtail to respond to system requirements, would use underutilized MED electric facilities and would be served by market power, in whole or in part." Market power refers to electricity purchased on the state's commodity market, as opposed to the lower-cost hydro-power MED receives from the New York Power Authority (NYPA). The pass-through of additional charges to high density load customers is vital to protect the rate interests of MED's other customers. The proposed inclusion of HDL customers in MED's Service Class 8 and the proposed terms and conditions applicable to such customers will prevent increasing costs to other customers. The proposed amendments have an effective date of July 17, 2018. The full text of the filing and the full record of the proceeding 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 action 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: 60 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.

(18-E-0211SP1)

Thousand Islands Bridge Authority

INFORMATION NOTICE

Thousand Islands Bridge Authority

Section 5502.1(c) and (d) are amended to read as follows:

(c) Schedule of Tolls. Effective April 1, 2018 the toll rates for the respective classes are as follows:

Category I

Subcategory 1A

Vehicles under 8,000 lbs. (3,629 kgs.) gross weight, for the first two (2) axles on any vehicle.

	Rate U. S. Dollar
From U. S. Toll Plaza Northbound	$3.00
From Canadian Toll Plaza Southbound	$3.00

Subcategory 1B

Vehicles over 8,000 lbs. (3,629 kgs.) gross weight for the following special vehicles: trucks transporting freight over one channel span only for delivery to Wellesley Island, New York or Hill Island, Ontario businesses or residents; motor homes of all classes and types; transport trucks towing self-contained travel trailer; and school buses, all of which for the first two (2) axles on any vehicle.

	Rate U. S. Dollar
From U. S. Toll Plaza Northbound	$4.50
From Canadian Toll Plaza Southbound	$4.50

Category II

Vehicles 8,000 lbs. (3,629 kgs.) or over gross weight, not included in Category I, transporting international freight for through passage over all spans including any vehicle, passenger bus, tractor trailer unit and any vehicle transporting commercial goods, for first two (2) axles on any vehicle.

	Rate U. S. Dollar
From U. S. Toll Plaza Northbound	$6.75*
From Canadian Toll Plaza Southbound	$6.75*

Category III

Additional axles for any axles in excess of two (2) on any vehicle, including trailers each.

	Rate U. S. Dollar
From U. S. Toll Plaza Northbound	$1.75
From Canadian Toll Plaza Southbound	$1.75*

* For Categories II and III for credit approved commercial account users whose accounts are current and fully paid on the 25th day of every month during any fiscal year (i.e., March 1st through February 28th or 29th), the following schedule of fiscal year volume discounts shall apply for Category II and III tolls only: and such discount, if applicable, shall be reimbursed to the user in the same currency as applied to such toll charges, or pro rata if both U.S. and Canadian currencies were involved, within 60 days after the completion of the fiscal year in which the same was earned.

Fiscal year volume	Discount
$24,000 - $50,000	3%
$50,001 - $75,000	5%
$75,001 - $100,000	7%
$100,000 – and over	10%

(d) Commutation trip cards, subject to the special conditions set forth in section 5502.2 below, are available at the following rates:

Commuter Discount Fare Cards	Rate U. S. Dollar
16-Trip Card	$23.00
72-Trip Card	$35.00

Section 5503.3(a) is amended to read as follows:

(a) Special permit and escort fees effective April 1, 2018.

Description:	Rate U. S. Dollar

From U. S. toll plaza northbound	$140.00
From Canadian toll plaza southbound	$140.00