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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

National Institute of Standards and Technology ("NIST") Handbook 44

I.D. No. AAM-13-18-00013-P

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

Proposed Action: This is a consensus rule making to amend section 220.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: National Institute of Standards and Technology ("NIST") Handbook 44.


Text of proposed rule: Subdivision (a) of section 220.2 of 1 NYCRR is amended to read as follows:


Text of proposed rule and any required statements and analyses may be obtained from: Mr. Mike Sikula, Director, Bureau of Weights & Measures, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-3146, email: Mike.Sikula@agriculture.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.

Consensus Rule Making Determination

The proposed rule will amend subdivision (a) of 1 NYCRR section 220.2 to incorporate by reference the 2018 edition of National Institute of Standards and Technology Handbook 44.

The proposed amendment to subdivision (a) of 1 NYCRR section 220.2 is non-controversial. The 2018 edition of Handbook 44 has been adopted by or is in the process of being adopted by every state; manufacturers of weighing and measuring devices located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce. Furthermore, the State’s users of commercial weighing and measuring devices also already use devices that conform to the provisions of this document due to its nearly-nationwide applicability.

Based upon the foregoing, the proposed rule will not have any adverse impact upon parties regulated pursuant thereto and is, therefore, non-controversial.

Job Impact Statement

The proposed rule will not have an adverse impact on jobs or on employment opportunities.

The proposed rule will incorporate by reference in subdivision (a) of 1 NYCRR section 220.2 the 2018 edition of National Institute of Standards and Technology Handbook 44 (henceforth, “Handbook 44 (2018 edition)”) which contains specifications, tolerances and regulations for commercial measuring devices. The 2017 edition of Handbook 44 is presently incorporated by reference. Handbook 44 (2018 edition) differs from the 2017 edition in that it contains new requirements for divisions in high-precision scales used in direct sales such as jewelry scales; deletes the requirement that the size of the pipe, mounted on a vehicle tank used for the delivery of petroleum products, must be set forth on the meter; amends requirements applicable to taximeters that use GPS technology; and other, non-substantive additions, amendments, and deletions. Handbook 44 (2018 edition) has been adopted or is in the process of being adopted by every state; manufacturers and users of weighing and measuring devices located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce.

The proposed rule requires manufacturers and users of weighing and measuring devices to do no more than they are practically required to do presently and/or lessens certain regulatory burdens; as such, the proposed rule will not have an adverse impact upon jobs or employment opportunities.
Office of Alcoholism and Substance Abuse Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Authorization for Physicians to Use Controlled Substances for Treatment of Chemical Dependence

I.D. No. ASA-13-18-00001-P

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

Proposed Action: This is a consensus rule making to repeal Part 829 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07, 19.09, 19.40, 32.01 and 32.07

Subject: Authorization for physicians to use controlled substances for treatment of chemical dependence.

Purpose: Repeals obsolete regulation.

Text of proposed rule: 14 NYCRR 829 is repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Sara Osborne, Associate Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: Sara.Osborne@oasas.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.

Consensus Rule Making Determination

On September 10, 2008 Dept. of Health (DOH) repealed provisions in 10 NYCRR 80.84 corresponding to provisions of 14 NYCRR 829 requiring practitioners and pharmacies to register with the DOH and OASAS to prescribe and dispense buprenorphine. Both agencies had previously adopted these regulations in response to the passage of the federal Drug Addiction Treatment Act of 2000 (DATA 2000) and a joint task force to implement the provisions and intent the Act.

DATA 2000 permitted certain qualified physicians to treat opioid addiction with schedule III, IV and V narcotics approved by the federal FDA for such purpose outside of an opioid treatment program (OTP; “methadone clinic”). Buprenorphine is the only approved medication in those federal schedules. Physicians were authorized to provide this treatment by the Drug Enforcement Administration (DEA) via a waiver (“DATA 2000 waiver”) from certain provisions of the Narcotic Addiction Treatment Act of 1974 based on documentation of certain required credentials and training. The federal law delegated some regulatory oversight to the individual states so the NY task force established a process for NY physicians authorized by DEA to jointly register with both DOH and OASAS to provide this treatment modality.

However, since 2002 the federal Substance Abuse and Mental Health Services Administration (SAMHSA) has facilitated the waiver process for physicians (extended to physician assistants and nurse practitioners by the Comprehensive Addiction and Recovery Act of 2016) and tracks the number of practitioner waivers nationwide, making the process for registration in New York unnecessary and duplicative. As noted above in 2008 DOH repealed provisions requiring practitioners and pharmacies to register with the Department to prescribe and dispense buprenorphine. This proposal is consistent with both the DOH repeal and the redundacy resulting from federal oversight.

This rule making is filed as a Consensus Rulemaking because its purpose is to repeal obsolete regulations to which no person is likely to object. The Behavioral Health Services Advisory Council approved advancement of this proposal on January 31, 2018.

Job Impact Statement

A Job Impact Statement (JIS) is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities.

Office of Children and Family Services

EMERGENCY RULE MAKING

Optional Expansion of Services Offered by Municipalities to Runaway and Homeless Youth

I.D. No. CFS-13-18-00026-E

Filing No. 250

Filing Date: 2018-03-13

Effective Date: 2018-03-13

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

Action taken: Amendment of Subparts 182-1, 182-2 and section 165-1.3 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 420(2)(a), 532-b(1), 532-d; Social Services Law, sections 20(3)(d), 34(3)(f); L. 2017, ch. 56, part M

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

Specific reasons underlying the finding of necessity: Part M of Chapter 56 of the Laws of 2017 amended the Executive Law to offer municipalities the option of expanding services so that they may better meet the needs of runaway and homeless youth (RHY) and to require certain RHY residential services programs to be certified by OCFS. These changes to the Executive Law become effective January 1, 2018, at which time regulations implementing the changes must also be in place. The Office of Children and Family Services (OCFS) is tasked with overseeing and monitoring RHY residential programs. The legislation requires OCFS to develop regulations and standards to address these new statutory changes.

The regulations provide notice, guidance and standards to all municipalities and RHY programs necessary to implement the new statutory provisions authorizing expanded services for RHY, which will help preserve the health, safety and welfare of such youth. The regulations also require that all RHY residential programs serving youth under 18 years of age must be certified by OCFS and meet the applicable minimum health and safety standards, thereby promoting the health, safety and welfare of such youth. Promulgating emergency regulations will facilitate compliance with legislative requirements and provide the necessary guidance to affected persons in order to preserve the health, safety and welfare of vulnerable runaway and homeless youth as soon as possible.

Subject: Optional expansion of services offered by municipalities to runaway and homeless youth.

Purpose: To implement changes made to the Executive Law regarding optional expansion of services to runaway and homeless youth.

Substance of emergency rule (Full text is posted at the following State website: https://ocfs.ny.gov/main/legal/Regulatory/final/): The proposed regulations implement Part M of Chapter 56 of the Laws of 2017, which amends section 420 and Article 19-H of the Executive Law to offer municipalities the option to expand services for runaway and homeless youth (RHY) and modifies the requirements for RHY programs. The law became effective on January 1, 2018.

The proposed regulations make the necessary conforming changes to Subparts 165-1, 182-1 and 182-2 of the Title 9 New York Codes, Rules and Regulations (NYCRR). Subpart 165-1 governs state funding to municipalities for youth development programs and RHY programs; Subpart 182-1 sets forth the regulatory standards for short-term RHY programs such as RHY shelters, and Subpart 182-2 sets forth the regulatory standards for long-term transitional independent living support programs (TILSP) that serve homeless youth.

The proposed regulations amend section 165-1.3 of Subpart 165-1 to require municipalities that seek RHY funding from the Office of Children and Family Services (OCFS) to include in their required RHY plans what, if any, of the new statutorily specified options they choose to implement. These options include extending how long RHY youth may stay in residential RHY programs under certain circumstances, raising the maximum permissible age of homeless youth who may be served by RHY programs from 21 to 24 years of age, and allowing homeless youth under 16 years of age to be served by a TILSP.

The proposed regulations also make necessary conforming changes to
Various sections of Subparts 182-1 and 182-2 of Title 9 NYCRR including: modifying the name and definition of approved runaway programs; adding the definition of homeless young adult; and eliminating the requirement that non-residential RHY programs be approved by OCFS. The proposed regulations also include the necessary conforming changes to require RHY programs to notify the applicable Local Department of Social Services (LDSS) if a youth is believed to be a destitute child; and to inform applicable youth of their right to re-enter foster care and refer them to the LDSS, upon request. The regulations also implement the new statutory provisions requiring that any RHY residential program, to include a TILSP, that serves youth under 21 years of age or that is contained in a municipality’s RHY plan must be certified by OCFS and, if certified on or after January 1, 2018, must be operated by an authorized agency. In addition, the proposed regulations make conforming changes to reflect the ability of RHY programs to provide those expanded services that a municipality has opted to include in its RHY plan.

Finally, the proposed regulations permit any residential RHY program that is not contained in any municipality’s RHY plan to apply to OCFS for a variance related to the age of youth served or the length of time youth may remain in such program under the same circumstances applicable to municipalities.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires March 28, 2018.

Text of rule and any required statements and analyses may be obtained from: Leslie Robinson, Senior Attorney, Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 474-3333, email: regcomments@ocfs.ny.gov

Regulatory Flexibility Analysis
1. Statutory authority: Part M of Chapter 56 of the Laws of 2017; Sections 420(2)(a), 532-b(1) and 532-d of the Executive Law; Sections 20(3)(d) and 34(3)(f) of the Social Services Law.
2. Legislative objectives: The intent of Part M of Chapter 56 of the Laws of 2017 was to better meet the needs of runaway and homeless youth (RHY) by offering municipalities the option to expand the services for such youth and by modifying the requirements for RHY programs. The proposed regulations enact the basic components of the enacted legislation as required.
3. Needs and benefits: The proposed regulations expand options available to municipalities and RHY programs to meet the service needs of RHY as identified by their communities. These additional options, which include expanding the maximum age homeless youth may receive RHY services from 21 to 24 years of age and extending the maximum allowable length of stay of RHY youth in residential programs under certain circumstances, allow municipalities to determine what is feasible and necessary at the local level while not requiring that additional services be created. The proposed regulations require that RHY programs notify the Local Department of Social Services (LDSS) if a youth is believed to be a destitute child, and to help interested and eligible youth re-enter foster care.

The proposed regulations implement the statutory provisions eliminating the requirement that non-residential services for RHY youth receive New York State Office of Children and Family Services (OCFS) approval to reduce requirements on such programs. The proposed regulations also implement the new statutory requirement that any RHY program that intends to serve youth under 18 years of age or that is contained in a municipality’s RHY plan must be certified by OCFS and, if certified on or after January 1, 2018, must be operated by an authorized agency to expand State oversight of such programs.

4. Costs: The proposed regulations implement State statutory provisions. Therefore, they will have no impact on local costs or costs to RHY programs.
5. Local government mandates: The proposed regulations offer additional service options for municipalities to consider. The determination of the municipality must be documented within existing municipal planning documents submitted to OCFS and through statutorily required written notice to OCFS under specified circumstances.
6. Professional services: The proposed regulations will offer additional service options for municipalities to consider. Any decision of a municipality to expand RHY services must be documented within existing municipal planning documents submitted to OCFS. Municipalities also will be required to provide statutorily required written notice to OCFS when youth remain in care for extended periods of time under certain circumstances. RHY programs will be required to provide OCFS with information regarding voluntary re-entry into foster care, and will require that certain additional RHY programs serving homeless youth amend their purposes within their articles of incorporation.

7. Duplication: OCFS evaluated existing rules and legal requirements and determined that the proposed regulations do not duplicate, overlap, or conflict with existing rules. The proposed regulations incorporate new state statutory provisions into existing regulations. The proposed regulations have no additional impact on the expenses, tasks, or other duties of municipal governments or RHY programs.
8. Alternatives: The proposed regulations are required to comply with Part M of Chapter 56 of the Laws of 2017.
9. Federal standards: The proposed regulations do not exceed any minimum standards of the federal government for the same or similar subject areas.

Rural Area Flexibility Analysis
1. Types and estimated numbers of rural areas: Municipalities and runaway and homeless youth (RHY) programs will be affected by the proposed regulations.
2. Reporting, recordkeeping and other compliance requirements: Municipalities and runaway and homeless youth (RHY) programs.
3. Costs: The proposed regulations merely implement State statutory provisions. Therefore, they will have no impact on costs for small businesses, local governments or RHY programs.
4. Economic and technological feasibility: The proposed regulations will not impact the economic or technological feasibility of small businesses or local governments.
5. Minimizing adverse impact: The proposed regulations will not create adverse economic impacts for small businesses or local governments.
6. Small business and local government participation: The regulations are proposed in response to a legislative mandate, thus participation from small business was not sought. OCFS sought input from municipal RHY coordinators.

Job Impact Statement
1. Nature of impact: The proposed regulations expand options available to municipalities and runaway and homeless youth (RHY) programs to meet the service needs of RHY as identified by their communities. The proposed regulations require that RHY programs notify the Local Depart-
The proposed regulations implement the statutory provisions eliminating the requirement that non-residential services for RHY youth receive New York State Office of Children and Family Services (OCFS) approval to reduce the requirements on such programs. The proposed regulations also implement the new statutory requirement that any RHY program that intends to serve youth under 18 years of age or that is contained in a municipality’s RHY plan must be certified by OCFS and, if certified on or after January 1, 2018, must be operated by an authorized agency to expand State oversight of such programs.

2. Categories and numbers affected: The proposed regulations will not impact jobs or employment opportunities.

3. Regions of adverse impact: The proposed regulations will not have a disproportionate adverse impact on jobs or employment opportunities regionally.

4. Minimizing adverse impact: The proposed regulations will not create adverse impact and thus do not require mitigation.

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

Specialized Secure Detention Facilities

I.D. No. CSF-51-17-00017-ERP
Filing No. 225
Filing Date: 2018-03-07
Effective Date: 2018-03-07

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

Action Taken: Amendment of Part 180 of Title 9 NYCRR.

Statutory authority: Executive Law, section 503(9)

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

Specific reasons underlying the finding of necessity: The “Raise the Age” law (Chapter 59 of the Laws of 2017 (RTA)) amended Executive Law section 503(9) to mandate “the Office of Children and Family Services (OCFS) in consultation with the State Commission of Correction (SCOC) to jointly regulate, certify, inspect and supervise specialized secure detention facilities.” The RTA also amended County Law section 218-a to mandate counties (including New York City) to “provide for adequate detention of alleged or convicted adolescent offenders in a specialized secure detention facility” and that the facility will be jointly administered by a designated county agency and the local county sheriff. Specialized secure detention facilities will need to be operational by October 1, 2018 for the safe detention of any youth alleged to be an adolescent offender. In order for the new specialized secure detention facilities to be operational, they first need to be developed and constructed, and then certified. Approval of construction plans for a specialized secure detention facility is necessary by OCFS and SCOC before any construction/ modifications can begin. OCFS, which is tasked with the role of jointly regulating, certifying, inspecting and supervising such facilities, may apply for certification to operate specialized secure detention facilities, including a regionalized approach or contracting with a public or nonprofit child caring agency. This section also requires nondiscrimination policies and policies to prevent child abuse and abuse of vulnerable youth, and provides that a specialized secure detention facility shall be subject to and must comply with the requirements of the Prison Rape Elimination Act of 2003.

Section 180-3.5 Construction and Substantial Remodeling/Definition and Approvals – provides that any plans to construct or to substantially remodel a specialized secure detention facility must be approved by OCFS and SCOC prior to construction.

Section 180-3.6 Physical Plant Requirements – provides the physical plant requirements for a specialized secure detention facility, including the minimum design and security requirements for bathrooms, sleeping accommodations, recreation areas, school facilities, health facilities, screening and fencing, communication and monitoring, among other requirements.

Section 180-3.7 Records – requires a specialized secure detention facility to maintain current case records for each youth and establishes record retention requirements.

Section 180-3.8 Reports – requires a specialized secure detention facility to report incident through the Juvenile Detention Automated System (JDAS) or any other system or manner as required by OCFS and SCOC.

Section 180-3.9 Intake Requirements – establishes the minimum assessment that must be performed when a youth first enters a specialized secure detention facility, to address the youth’s well-being and proper placement, as well as the safety of others in the facility.

Section 180-3.10 Classification – describes how a specialized secure detention facility will determine classification, which results in a youth’s proper placement and supervision in the facility.

Section 180-3.11 Staffing and Supervision of Youth – establishes the required staffing necessary for the adequate and continuous supervision, safety, health, proper care and treatment of youth under the care of a specialized secure detention facility, including staff to youth ratios, programmatic staff requirements, staffing qualifications, and staff training.

Section 180-3.12 Behavioral Support System – directs a specialized secure detention facility to create a policy for managing youth behavior that must be approved by OCFS.

Section 180-3.13 Education – requires a specialized secure detention facility to provide all educational programs required by section 112 of the Education Law and have alternative programs for youth who have a diploma, a high school equivalency diploma or aged out of compulsory attendance.

Section 180-3.14 Behavioral Intervention Policies – requires a specialized secure detention facility to have a policy and methods approved by OCFS that will direct staff on how to address instances of escalated behavior by youth. This section addresses de-escalation techniques, as well as the use of physical or mechanical restraints.
Section 180-3.15 Use of Physical Restraint – outlines requirements pertaining to the use of physical restraint. Staff who are expected to apply physical restraints must be specially trained. Physical restraints shall not be used for discipline, punishment or administrative convenience.

Section 180-3.16 Use of Mechanical Restraints – provides requirements for the use of mechanical restraints. Staff who are expected to use mechanical restraints must be specially trained. Mechanical restraints shall not be used for discipline, punishment or administrative convenience.

Section 180-3.17 Room Confinement – requires a specialized secure detention facility to develop a procedure for room confinement approved by OCFS if room confinement is to be used. Room confinement may be used to calm or control acute physical behavior, but not be used for discipline, punishment or administrative convenience.

Section 180-3.18 Searches of Youth – this section requires a specialized secure detention facility to develop a policy that must be approved by OCFS that outlines search parameters.

Section 180-3.19 - Waivers – provides that OCFS, in consultation with SCOC, may grant a waiver of a non-statutory requirement of this Subpart if the waiver does not affect the health, safety or welfare of the youth in the specialized secure detention facility.

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 20, 2017. L.D. No. CFS-51-17-00017-EP. The emergency rule will expire June 4, 2018.

Emergency rule compared with proposed rule: Substantial revisions were made in section 180-3.3(c).

Text of rule and amending statements and analyses may be obtained from: Leslie Robinson, Senior Attorney, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 486-9563, email: recomments@ocfs.ny.gov

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

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

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

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

Assessment of Public Comment

On December 20, 2017, the New York State Office of Children and Family Services (OCFS) published a Notice of Emergency Adoption and Proposed Rulemaking, adding Subpart 180-3 to Title 9 of the New York State Codes, Rules and Regulations (NYCRR). These regulations govern specialized secure detention facilities (SSDs) required by the 2017 “Raise the Age” (RTA) legislation (Part WWW of Chapter 59 of the Laws of 2017). The comment period regarding the publication ended on February 20, 2018.

OCFS received comments from: a county sheriff; a legal service provider; two county departments; two local officials; an administrative judge; two advocacy organizations; and the Office of Court Administration.

These comments and OCFS’ responses are summarized below.

Interpretation

Many commenters did not provide specific comments on the actual regulations. Rather they asked questions regarding the implementation of the regulation or the meaning of certain provisions. These questions will be addressed in a “Frequently Asked Questions” document which will appear on OCFS’ website.

Youth Population and Staff Assignment

Co-location of Youth

The regulations permit co-location of an SSD with a secure detention facility. However, there are limitations on the co-location of adolescent offenders with juvenile delinquents and juvenile offenders. Exceptions are allowed for education, infirmary, fire drills, transport or as approved by OCFS and the State Commission of Correction (SCOC). In consideration of the comment, OCFS has made a change to permit an SSD to submit a safety and staffing plan for approval by OCFS and SCOC, which, if approved, may allow female SSD residents and female residents of a secure detention facility to be co-located on the same housing unit.

Staff Assignment

The regulations provide that staff who are not direct care staff may be shared across detention facility types. One commenter indicated that this limitation will affect staffing patterns and potentially raise significant challenges with labor unions. The commenter appears to be under the impression that SSD staff can never be assigned to a secure juvenile detention facility. That is not the case. Such staff could work in either facility assuming they are qualified but they cannot do so at the same time.

Application of Law and Standards

PREA

More than one commenter urged OCFS to apply the Prison Rape Elimination Act (PREA) standards to SSDs. PREA defines a juvenile as a person “...under the age of 18, unless under adult court supervision and confined or detained in a prison or jail” (28 CFR 115.5). A “juvenile facility” is defined as a facility that is primarily used for the confinement of juveniles pursuant to the juvenile justice system or criminal justice system (Id.). Therefore, as adolescent offenders will eventually be those charged with commission of a felony while under the age of 18 and SSDs are not prisons or jails, it is OCFS’ opinion that the juvenile provisions of PREA (28 CFR Subpart D) are applicable to SSDs, and the clarification was made.

Confidentiality

One commenter suggested that the confidentiality provisions of Executive Law section 501-c, rather than Social Services Law section 372, should apply to SSDs. Contrary to the Commenter’s assessment Social Services Law Section 372 does require confidentiality and is a standard applicable to authorized agencies, whereas Executive Law section 501-c pertains exclusive to OCFS operated facilities. Therefore, the change has not been made.

Subject Matter and Content

Some commenters noted that substantive sections that appear in the current secure detention facility regulations, such as visitation and telephone access were not in these regulations. As was noted in OCFS’ Notice of Emergency Adoption and Proposed Rulemaking published on December 20, 2017, another set of regulations for SSDs will be promulgated. This group will address additional youth related topics.

OCFS received conflicting comments regarding the requirement of 5.5 hours of educational instruction. One commenter suggested that this be a minimum standard, and another thought it to be excessive. Another commenter suggested additional certification requirements for teachers and educational programs. The language was clarified to refer to educational instruction and programming was adopted.

The provisions pertaining to use of physical restraints received two comments. One commenter suggested that the requirement for all non-physical techniques be tried first, should be modified to refer to all appropriate non-physical techniques. The other commenter suggested that the regulation should include training requirements, safety precautions, post restraint procedures that include a timely administrative review to ensure compliance and the 24-hour medical review was modified. While regulations do provide that de-escalation techniques need not be tried if to do so would be impractical, this clarification was made. There are provisions for training and post restraint procedures and some reorganization has clarified that this is the case. The general understanding of medical review is that it should be done in a timely manner and, therefore, the clarification “as soon as possible” has been added.

Provisions pertaining to telecommunications received two comments. One commenter confused the 24-hour phone accessibility requirement to pertain to youth instead of staff. Another commenter suggested that the reference to “calling” staff for assistance, refer to “alerting” instead for flexibility. The latter clarification was adopted.

There were several comments pertaining to the provisions concerning mechanical restraints, room confinement and searches. The majority of commenters suggested additional detail, which is best addressed in the creation and review of policy. A clarification that mechanical restraints be used only when other “appropriate” interventions are not successful was adopted. A similar clarification was made to provisions pertaining to room confinement. In addition, several technical revisions were made.

NOTICE OF ADOPTION

Optional Expansion of Services Offered by Municipalities to Runaway and Homeless Youth

L.D. No. CFS-01-18-00003-A

Filing No. 253

Filing Date: 2018-03-13

EFFECTIVE DATE: 2018-03-28

PURPOSE TO THE PROVISIONS OF THE STATE Administrative Procedural Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Subparts 182-1, 182-2 and section 165-1.3 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 420(2)(a), 532-b(1), 532-d; Social Services Law, sections 20(3)(d), 34(3)(d); L. 2017, ch.56, part M

Subject: Optional expansion of services offered by municipalities to runaway and homeless youth.

Purpose: To implement changes made to Executive Law regarding optional expansion of services to runaway and homeless youth.

NYS Register/March 28, 2018
Substance of final rule: The proposed regulations implement Part M of Chapter 5 of the NYCRR of 2017, which amends section 420 and Article 19-H of the Executive Law to offer municipalities the option to expand services for runaway and homeless youth (RHY) and modifies the requirements for RHY programs. The law became effective on January 1, 2018. The proposed regulations make the necessary conforming changes to Subparts 165-1, 182-1 and 182-2 of the Title 9 New York Codes, Rules and Regulations (NYCRR). Subpart 165-1 governs state funding to municipalities for youth development programs and RHY programs; Subpart 182-1 sets forth the regulatory standards for short-term RHY programs such as RHY shelters, and Subpart 182-2 sets forth the regulatory standards for longer-term transitional independent living support programs (TILSP) that serve homeless youth.

The proposed regulations amend section 165-1.3(b)(6) of Subpart 165-1 to require municipalities that seek RHY funding from the Office of Children and Family Services (OCFS) to include in their required RHY plans what, if any, of the new statutorily specified options they choose to implement. These options include extending how long RHY youth may stay in residential RHY programs under certain circumstances, raising the maximum permissible age of homeless youth who may be served by RHY programs from 21 to 24 years of age, and allowing homeless youth under 10 years of age to be served by a TILSP.

The proposed regulations also make necessary conforming changes to various sections of Subparts 182-1 and 182-2 of Title 9 NYCRR including: modifying the name and definition of approved runaway programs; adding the definition of homeless youth for RHY programs; eliminating the requirement that non-residential RHY programs be approved by OCFS; the proposed regulations also include the necessary conforming changes to require RHY programs to notify the applicable Local Department of Social Services (LDSS) if a youth is believed to be a destitute child; and to inform applicable youth of their right to re-enter foster care and refer them to the LDSS, upon request. The regulations also implement the new statutory provisions requiring that any RHY residential program, to include a TILSP, that serves youth under 18 years of age, or that is contained in a municipality’s RHY plan must be certified by OCFS and, if certified on or after January 1, 2018, must be operated by an authorized agency. In addition, the proposed regulations make conforming changes to reflect the ability of RHY programs to provide those expanded services that a municipality has opted to include in its RHY plan.

Finally, the proposed regulations permit any residential RHY program that is not contained in any municipality’s RHY plan to apply to OCFS for a variance related to the age of youth served or the length of time youth may remain in such program under the same circumstances applicable to municipalities.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 165-1.3(b)(6), 182-1.2(k)(2), 182-1.9(j)(1), 182-1.15(c)(5), 182-2.2(k)(2), 182-2.4(a), 182-2.8(a) and 182-2.17(d).

Text of rule and any required statements and analyses may be obtained from: Leslie Robinson, Senior Attorney, Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 474-3333, email: regcomments@ocfs.ny.gov

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

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

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 New York State Office of Children and Family Services (OCFS) provided an opportunity for public comment on proposed regulations regarding options for municipalities to expand services that are offered to runaway and homeless youth (RHY). OCFS received comments from one legal services organization. The following is a summary of the comments and the response of OCFS to each comment received.

Comment 1: The first comment suggested revising section 165-1.3(b)(6) to move the wording “age fourteen or older” to the part of the regulation that refers only to periods of 60 days and to add the word “initial” before the text that defines the lengths of stays as discussed.

Response: OCFS considered this comment and made the change suggested regarding the positioning of the wording “age fourteen or older” as it clarifies the option provided to municipalities under the Executive Law. OCFS did not add the word “initial” as recommended as the relevant language in the section mirrors the statutory language and is further addressed under section 182-1.9(d)(5).

Comment 2: With respect to section 182-1.2(c) and the definition of runaway and homeless youth crisis services program, the commenter suggested specifying the applicable Office of Temporary and Disability Assistance (OTDA) regulations in order to provide clearer guidance to the localities and programs that must adhere to them.

Response: OCFS considered the comment and did not make the suggested change as the text mirrors the statutory language and the applicable OTDA regulations may change over time.

Comment 3: With respect to section 182-1.2(k), the commenter noted that this subdivision contains a typographical error in paragraph (2).

Response: OCFS agreed and made this change.

Comment 4: With respect to section 182-1.4, the commenter noted that this section generally describes approval of non-residential RHY crisis services programs and certification of residential RHY crisis services programs and suggested that notification should also be provided to the applicants, at minimum for applicants to operate residential programs, who submit their applications directly to OCFS.

Response: OCFS considered the comment and did not make the suggested change, as residential programs will receive notice of the approval of their application upon certification.

Comment 5: With respect to section 182-1.9(d)(2), the commenter suggested adding the word “initial” before each period of stay described in this section.

Response: OCFS considered this comment and did not make the suggested change, as the language in this section mirrors the statutory language, and is further addressed under section 182-1.9(d)(5).

Comment 6: With respect to section 182-1.9(i), the commenter suggested maintaining consistency with the amendments to paragraphs (2) and (3) of subdivision (d) by amending paragraph (1) of subdivision (j) to change 30 days to the maximum length of stay authorized under subdivision (d) of this section.

Response: OCFS agreed to this conforming change and amended section 182-1.9(j) as suggested.

Comment 7: With respect to section 182-1.15, the commenter suggested paragraph (5) of subdivision (c) be amended to refer to the applicable maximum length of stay period set forth in paragraph (2) instead of paragraph (3) of the subdivision. The commenter also suggested that paragraph (6) would be clarified by inserting a cross reference to the applicable paragraph of subdivision (d) that references the maximum length of stay.

Response: OCFS considered this first comment and disagreed that section 182-1.15(c)(5) erroneously refers to paragraph (3). Therefore, OCFS did not make the suggested change. However, OCFS did include a reference to subdivision (3) in paragraph (6) of this subdivision.

Comment 8: The commenter noted that section 182-2.2(k)(2) contained a typographical error in paragraph (2).

Response: OCFS agreed with the comment and corrected this.

Comment 9: With respect to section 182-2.4, the commenter suggested that this section be revised to clarify that applicants of non-residential programs should submit their applications to municipalities similar to the provisions in section 182-1.4.

Response: OCFS agreed with this comment and made the suggested change.

Comment 10: With respect to section 182-2.4, the commenter noted that section 182-2 appears to state that notification should be provided to the applicants of decisions and suggested amending subdivision (e) of this section to include OCFS notifying applicants of the decision.

Response: OCFS considered this comment and did not make the suggested change, as RHY residential programs will receive notification upon certification.

Comment 11: The commenter noted that section 182-2.8(a) contains a typographical error.

Response: OCFS agreed with this comment and made the suggested change.

Comment 12: The commenter noted that section 182-2.17 contains a typographical error.

Response: OCFS agreed with this comment and made the suggested change.

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Expansion of Definition of Prospective Relative Guardian and Expansion of KinGAP Eligibility

LD. No. CFS-13-18-00011-P

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

Proposed Action: Amendment of sections 436.1, 436.5 and 436.6 of Title 18 NYCRR.
Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 458-b and 458-c.

Subject: Expansion of definition of prospective relative guardian and expansion of KinGAP eligibility.

Purpose: To expand definition of prospective relative guardian and KinGAP eligibility.

Text of proposed rule: Subdivision (d) of section 436.1 is amended to read as follows:

(d) Prospective relative guardian means a person [or persons who is or related to the child through blood, marriage or adoption] who has been caring for the child as a fully certified or approved foster parent for at least six consecutive months prior to applying for kinship guardianship assistance payments, and who:

1. is related to the child through blood, marriage or adoption;
2. is related to a half-sibling of the child through blood, marriage, or adoption, and where such person or persons is or are also the prospective or appointed relative guardian or guardians of such half-sibling; or
3. is an adult with a positive relationship with the child, including, but not limited to, a step-parent, godparent, neighbor or family friend.

Subdivision (e) of section 436.5 is amended to read as follows:

(e) Kinship guardianship assistance payments must be made to the relative guardian or guardians or to the successor guardian or guardians until the child’s 18th birthday or, if the child had attained 16 years of age before the kinship guardianship assistance agreement became effective, until the child attains 21 years of age provided the child consented upon attaining the age of 18 to the continuation of guardianship and is:

1. completing secondary education or a program leading to an equivalent credential;
2. enrolled in an institution which provides post-secondary or vocational education;
3. employed for at least 80 hours per month;
4. participating in a program or activity designed to promote, or remove barriers to, employment; or
5. incapable of any such activities due to a medical condition, which incapacity is supported by regularly updated information in the child’s case record.

Subdivision (b) of section 436.6 is amended to read as follows:

(b) Where the child has [had] attained the age of [16 years before the kinship guardianship assistance agreement became effective and is under the age of 18 but is] under 21 years of age, the relative guardian or successor guardian must certify and provide satisfactory documentation to the district that the child is:

1. completing secondary education or a program leading to an equivalent credential;
2. enrolled in an institution which provides post-secondary or vocational education;
3. employed for at least 80 hours per month;
4. participating in a program or activity designed to promote, or remove barriers to employment; or
5. incapable of any such activities due to a medical condition, which incapacity is supported by regularly updated information in the child’s case record.

Text of proposed rule and any required statements and analyses may be obtained from: Leslie Robinson, Senior Attorney, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 474-3333, email: regcomments@ocfs.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:
   Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.
   Section 34(3)(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care within New York State.
   Chapter 384 of the Laws of 2017 authorizes OCFS to amend or repeal any rule or regulation necessary for the implementation of the kinship guardianship assistance program (KinGap) as enacted by the Chapter.
2. Legislative objectives:
   The proposed regulations would implement the provisions of Chapter 384 of the Laws of 2017.
   The proposed regulations would implement Chapter 384 of the Laws of 2017 by making conforming changes to New York State regulations.
   The proposed regulations would enhance permanency of foster children in kinship guardianship arrangements by expanding the definition of “prospective relative guardian” thereby increasing the categories and number of foster parents who may be eligible for KinGAP with a foster child in their care, and increasing permanency options for children and siblings in foster care. This expansion is projected to increase the number of children who are discharged from foster care to a permanent home thus reducing a child’s stay in foster care. The proposed regulations would also expand eligibility for KinGAP until age 21 for children where the KinGAP agreement became effective prior to age 16, if specified criteria are met. Prior to Chapter 384 of the Laws of 2017, such KinGAP agreements would end at age 16 for these youths.
3. Needs and benefits:
   The proposed regulations would improve an additional mandate on social services districts and social services officials in determining eligibility for KinGAP for prospective relative guardians and expansion of administration of KinGAP payments for certain children.
4. Alternatives:
   No alternative approaches to implementing the changes to regulation were considered. These amendments are necessary to implement Chapter 384 of the Laws of 2017 and, in regard to the definition of a prospective relative guardian, to conform to current federal law.
5. Economic and Technological Feasibility:
   These proposed regulations would have an impact upon local department of social service and voluntary authorized agencies in New York State, there are approximately 58 social service districts and approximately 83 authorized voluntary agencies.
6. Paperwork:
   The proposed regulations would comply with applicable state and federal standards with expansion of the definition of “prospective relative guardian” and would exceed existing federal standards with expansion of eligibility for KinGAP beyond age 18 under certain conditions to a child who attained the age of 16 prior to when the KinGAP agreement became effective.
7. Compliance schedule:
   Compliance with the proposed regulations would begin immediately upon final adoption or 60 days following federal approval of the Title IV-E amendment, whichever comes later.

Regulatory Flexibility Analysis

1. Effect on Small Businesses and Local Governments:
   The proposed regulations will have an impact upon local department of social service and voluntary authorized agencies. In New York State, there are approximately 58 social service districts and approximately 83 authorized voluntary agencies.
2. Compliance Requirements:
   The proposed regulations would implement Chapter 384 of the Laws of 2017 regarding the kinship guardianship assistance program (KinGAP) by expanding the definition of “prospective relative guardian” to include a fully certified or approved foster parent who is related to a half-sibling of the foster child in their care, and who is either the prospective or appointed relative guardian of such half-sibling. The definition of a “prospective relative guardian” would also be expanded to include fully certified or approved foster parents with a positive relationship with a non-related foster child in their care (otherwise known as “fictive” kin).
3. Professional Services:
   These proposed regulations would not create the need for additional professional services.
4. Compliance Costs:
   The fiscal impact of the proposed regulations is negligible to both the State and local governments as any additional KinGAP costs will be offset by reduced foster care costs resulting from moving the child from foster care to a KinGAP placement. In addition, costs related to maintaining KinGAP financial supports to age 21 would be mitigated by the avoidance of the costs related to the negative impact of children aging out of foster care without positive adult supports in their lives.
5. Economic and Technological Feasibility:
   These proposed regulations would not have an adverse economic impact on social service districts, and would not require the hiring of additional staff.
2. Reporting, recordkeeping and other compliance requirements:
The proposed regulations would implement Chapter 384 of the Laws of 2017 regarding the kinship guardianship assistance program (KinGAP) by expanding the definition of a “prospective relative guardian” to include a fully certified or approved foster parent who is related to or a half-sibling of the foster child in such foster parent’s care and who is either the prospective or appointed relative guardian of such half-sibling. The definition of a “prospective relative guardian” would also be expanded to include fully certified or approved foster parents with a positive relationship with a non-related foster child in their care (otherwise known as “fictive” kin).

3. Costs:
The fiscal of the proposed regulations will be negligible to both the State and local governments as any additional KinGAP costs will be offset by reduced foster care costs resulting from moving the child from foster care to a KinGAP placement. In addition, costs related to maintaining KinGAP financial supports to age 21 would be mitigated by the avoidance of the costs related to the negative impact of children aging out of foster care without positive adult supports in their lives.

4. Minimizing adverse impact:
It is not anticipated that the proposed regulations will result in an adverse impact on social service districts or small businesses that are in rural areas.

5. Rural area participation:
The proposed regulations would implement Chapter 384 of the Laws of 2017 which amends sections 458-a and 458-b of the Social Services Law. Since the since the enactment of the KinGAP program in 2011, the Office of Children and Family Services (OCFS) has received comments from various groups, notably kinship advocacy groups, of the desire to expand the KinGAP program to include fictive kin. Concerns have also been raised that termination of the KinGAP agreement at age 18 for youth who attained the age of 16 prior to the KinGAP agreement becoming effective created an apparent disparity with the adoption subsidy program and the loss of benefits for a potentially vulnerable population.

6. For Rules that Either Establish or Modify a Violation or Penalties:
The proposed regulations would not establish or modify a violation or penalty.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:
The proposed regulations will affect the 44 social services districts and approximately 35 voluntary authorized agencies that are in rural areas.

2. Reporting, recordkeeping and other compliance requirements:
The proposed regulations would implement Chapter 384 of the Laws of 2017 regarding the kinship guardianship assistance program (KinGAP) by expanding the definition of a “prospective relative guardian” to include a fully certified or approved foster parent who is related to a half-sibling of the foster child in such foster parent’s care and who is either the prospective or appointed relative guardian of such half-sibling. The definition of a “prospective relative guardian” would also be expanded to include fully certified or approved foster parents with a positive relationship with a non-related foster child in their care (otherwise known as “fictive” kin).

3. Costs:
The fiscal of the proposed regulations will be negligible to both the State and local governments as any additional KinGAP costs will be offset by reduced foster care costs resulting from moving the child from foster care to a KinGAP placement. In addition, costs related to maintaining KinGAP financial supports to age 21 would be mitigated by the avoidance of the costs related to the negative impact of children aging out of foster care without positive adult supports in their lives.

4. Minimizing adverse impact:
It is not anticipated that the proposed regulations will result in an adverse impact on social service districts or small businesses that are in rural areas.

5. Rural area participation:
The proposed regulations would implement Chapter 384 of the Laws of 2017 which amends sections 458-a and 458-b of the Social Services Law. Since the since the enactment of the KinGAP program in 2011, the Office of Children and Family Services (OCFS) has received comments from various groups, notably kinship advocacy groups, of the desire to expand the KinGAP program to include fictive kin. Concerns have also been raised that termination of the KinGAP agreement at age 18 for youth who attained the age of 16 prior to the KinGAP agreement becoming effective created an apparent disparity with the adoption subsidy program and the loss of benefits for a potentially vulnerable population.

6. For Rules that Either Establish or Modify a Violation or Penalties:
The proposed regulations would not establish or modify a violation or penalty.

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Jurisdictional Classification
I.D. No. CVS-13-18-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:
Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading “Gaming Commission,” by increasing the number of positions of Investigator 1 from 22 to 23 and Steward from 2 to 4.

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Jurisdictional Classification
I.D. No. CVS-13-18-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:
Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading “Gaming Commission,” by increasing the number of positions of Investigator 1 from 22 to 23 and Steward from 2 to 4.

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was
previously printed under a notice of proposed rule making, I.D. No. CVS-

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because
this rule is subject to a consolidated rural area flexibility analysis that was
previously printed under a notice of proposed rule making, I.D. No. CVS-

Job Impact Statement
A job impact statement is not submitted with this notice because this rule
is subject to a consolidated job impact statement that was previously
printed under a notice of proposed rule making, I.D. No. CVS-12-18-

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification
I.D. No. CVS-13-18-00004-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the non-competitive class.
Text of proposed rule: Amend Appendix 2 of the Rules for the Classified
Service, listing positions in the non-competitive class, in the State
University of New York under the subheading “State University Colleges;”
by increasing the number of positions of øSecretary 2 at SUC at New Paltz
from 2 to 3.

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel,
NYS Department of Civil Service, Empire State Plaza, Agency Building
1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because
this rule is subject to a consolidated regulatory impact statement that was
previously printed under a notice of proposed rule making, I.D. No. CVS-

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because
this rule is subject to a consolidated regulatory flexibility analysis that was
previously printed under a notice of proposed rule making, I.D. No. CVS-

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because
this rule is subject to a consolidated rural area flexibility analysis that was
previously printed under a notice of proposed rule making, I.D. No. CVS-

Job Impact Statement
A job impact statement is not submitted with this notice because this rule
is subject to a consolidated job impact statement that was previously
printed under a notice of proposed rule making, I.D. No. CVS-12-18-

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification
I.D. No. CVS-13-18-00006-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text of proposed rule: Amend Appendix 1 of the Rules for the Classified
Service, listing positions in the exempt class, in the Department of
Environmental Conservation, by increasing the number of positions of Assis-
tant Public Information Officer from 3 to 9.

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

Data, views or arguments may be submitted to: Marc Hannibal, Counsel,
NYS Department of Civil Service, Empire State Plaza, Agency Building
1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because
this rule is subject to a consolidated regulatory impact statement that was
previously printed under a notice of proposed rule making, I.D. No. CVS-

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because
this rule is subject to a consolidated regulatory flexibility analysis that was
previously printed under a notice of proposed rule making, I.D. No. CVS-

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because
this rule is subject to a consolidated rural area flexibility analysis that was
previously printed under a notice of proposed rule making, I.D. No. CVS-

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification
I.D. No. CVS-13-18-00005-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**Proposed Rule Making**

**No Hearing(s) Scheduled**

**Jurisdictional Classification**

I.D. No. CVS-13-18-00007-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory Authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

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

**Text of Proposed Rule:** Amend Appendix 2 of the Rules for the Classified Service listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading “Office of Alcoholism and Substance Abuse Services,” by adding thereto the position of Chief Medical Services (1).

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**Proposed Rule Making**

**No Hearing(s) Scheduled**

**Jurisdictional Classification**

I.D. No. CVS-13-18-00008-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory Authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class.

**Text of Proposed Rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Audit and Control, by increasing the number of positions of Assistant Counsel from 13 to 16 and Special Investment Officer from 57 to 79.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**Proposed Rule Making**

**No Hearing(s) Scheduled**

**Jurisdictional Classification**

I.D. No. CVS-13-18-00009-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory Authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

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

**Text of Proposed Rule:** Amend Appendix 2 of the Rules for the Classified Service listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading “Office of Alcoholism and Substance Abuse Services,” by adding thereto the position of Chief Medical Services (1).

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-12-18-00012-P, Issue of March 21, 2018.
EMERGENCY RULE MAKING

Biological Products in the Profession of Pharmacy

I.D. No. EDU-52-17-00007-E
Filing No. 241
Filing Date: 2018-03-12
Effective Date: 2018-03-12

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 63.6 of Title 8 NYCRR.

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

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

**Specific reasons underlying the finding of necessity:** The proposed amendment is necessary to implement Chapter 357 of the Laws of 2017 (Chapter 357), which amended the Education Law by defining the terms “biological product” and “interchangeable biological product” and establishing the requirements for both the substitution of a biological product and the appropriate method of communication by the pharmacist to the prescriber to notify him or her of the substitution of the biological product dispensed, effective October 23, 2017. Pursuant to Chapter 357, a “biological product” means a biological product as defined in subsection (i) of section 351 of the Public Health Service Act, 42 U.S.C. section 262(c) and an “interchangeable biological product” means a biological product licensed by the United States Food and Drug Administration (FDA) pursuant to 42 U.S.C. section 262(k)(4) as set forth in the latest edition or supplement of the United States Food and Drug Administration Lists of Licensed Biological Products with Reference Product Exclusivity and Interchangeability Evaluations, sometimes referred to as the “Purple Book,” or a biological product determined by the United States Food and Drug Administration to be therapeutically equivalent as set forth in the latest edition or supplement of the United States Food and Drug Administration Approved Drug Products with Therapeutic Equivalence Evaluations, sometimes referred to as the “Orange Book.”

Chapter 357 further requires that, notwithstanding any other law, when an interchangeable biological product is unavailable and the biological product originally prescribed is available and the pharmacist agrees to dispense the prescribed biological product for a price that will not exceed the price that would have been charged for the interchangeable biological substitute had it been available, substitution of an interchangeable biological product will not be required. If the interchangeable biological product is not available and a medical emergency situation, which for purposes of Chapter 357 is defined as any condition requiring alleviation of severe pain or which threatens to cause disability or take life if not promptly treated, exists, then the pharmacist may dispense the prescribed biological product at his or her regular price. In such instances the pharmacist must record the date, hour and nature of the medical emergency on the back of the prescription and keep a copy of all such prescriptions.

Chapter 357 also requires that the prescriber inform the patient whether he or she has prescribed a brand name or its generic equivalent drug product or interchangeable biological product.

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

The proposed amendment was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the December 2017 meeting of the Board of Regents, effective December 12, 2017. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the March 12-13, 2018 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the March meeting, would be March 28, 2018, the date the Notice of Adoption would be published in the State Register. However, the December emergency rule will expire on March 11, 2018. If the rule were to lapse, it would impede the ability of pharmacists to substitute FDA designated biological products, when permissible under Chapter 357.

Therefore, emergency action is necessary at the February 2018 Regents meeting for the preservation of the public health and the general welfare in order to enable the State Education Department to continue to implement Chapter 357, which is already in effect, so that pharmacists will be able to substitute FDA designated biological products, unless prohibited from doing so by the prescriber.

It is anticipated that the proposed rule will be presented for permanent adoption as a permanent rule at the March 12-13, 2018 Regents meeting, which is the first scheduled meeting after expiration of the 60-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

**Subject:** Biological products in the profession of pharmacy.

**Purpose:** Establishes requirements for substitution of interchangeable biological products for prescribed products.

**Text of emergency rule:** 1. Subdivision (a) of section 29.7 of the Rules of the Board of Regents is amended, as follows:

(a) The requirements of this section set forth for written prescriptions shall also be applicable to electronic prescriptions, as defined in section 63.6(a)(7)(i)(a) of this Title, unless otherwise indicated. For purposes of this section signature shall include an electronic signature, as defined in section 63.6(a)(7)(i)(c) of this Title, when applicable, and sign shall include the affixing of an electronic signature. Unprofessional conduct in the practice of pharmacy shall include all conduct prohibited by sections 29.1 and 29.2 of this Part except as provided in this section, and shall also include the following:

(1) Failure to identify a generic product or interchangeable biological product dispensed on a prescription by writing the name of the manufacturer and of the distributor, if different, on the prescription and on the label, except as otherwise provided in Education Law, sections 6816-a(1)(c) and 6816-a(3)(c).

(2) ... (8) ...

(i) ... (vii) ...

(9) ...

(10) ...

(11) ...

(12) ...

(13) ...

(14) ...

(15) ...

(16) ...

(17) ...

(18) ...

(19) ...

(20) ...

(21) ...

(22) ...

(23) ...

(24) ...

(25) ...

(26) ...

(27) ...

(28) ...

(29) ...

(30) ...

(31) ...

(32) ...

(33) ...

(34) ...

(35) ...

(36) ...

(37) ...

(38) ...

(39) ...

(40) ...

(41) ...

(42) ...

(43) ...

(44) ...

(45) ...

(46) ...

...
(c) . . .
(d) . . .
(e) . . .
(f) . . .
(g) . . .
(1) . . .
(2) . . .
(3) . . .
(4) . . .
(5) . . .
(6) . . .
(7) . . .
(16) . . .
(i) . . .
(17) . . .
(i) . . .
(ii) . . .
(18) . . .
(19) . . .
(20) . . .
(21) Aiding and abetting an unlicensed person to dispense drugs.
   (i) . . .
      (a) . . .
      (b) . . .
      (c) . . .
      (d) . . .
      (e) . . .
      (f) . . .
      (g) . . .
      (h) . . .
      (i) . . .
      (j) . . .
   (ii) . . .
      (a) . . .
      (b) Unlicensed persons shall not be authorized to:
         (1) . . .
         (2) . . .
      (3) make determinations of the therapeutic equivalency as such determinations apply to generic substitution or interchangeable biological product substitution;
         (4) . . .
         (5) . . .
         (6) . . .
         (7) . . .
      (c) . . .
   2. Paragraph (7) of subdivision (a) of section 63.6 of the Regulations of the Commissioner of Education is amended, as follows:
(a) General provisions.
   (1) . . .
   (2) . . .
   (3) . . .
   (4) . . .
   (5) . . .
   (6) . . .
   (7) Electronic prescriptions.
      (i) . . .
         (a) . . .
         (b) . . .
         (c) . . .
      (ii) A pharmacist may, based upon his or her professional judgment, accept an electronic prescription from a prescriber, to the pharmacy of the patient’s choice, subject to the following requirements:
         (a) . . .
         (b) . . .
         (c) . . .
         (d) . . .
         (e) such prescriptions shall be processed in accordance with the requirements of section 29.7 of this Title, provided, however, that prescriptions for controlled substances shall be filled in accordance with the requirements of article 33 of the Public Health Law; and except when the prescriber inserts an electronic direction to dispense the drug as written, the prescriber’s electronic signature shall designate approval of an interchangeable biological product by a pharmacist. Notwithstanding any other provision of this section or any other law to the contrary, when an interchangeable biological product is not available and the biological product originally prescribed is available and the pharmacist agrees to dispense the prescribed biological product for a price that will not exceed the price that would have been charged for the interchangeable biological substitute had it been available, substitution of an interchangeable biological product will not be required. If the interchangeable biological product is not available and a medical emergency situation, which for purposes of this section is defined as any condition requiring alleviation of severe pain or which threatens to cause disability or take life if not promptly treated, exists, then the pharmacist may dispense the prescribed biological product at his or her regular price. In such instances, the pharmacist must record the date, hour and nature of the medical emergency on the back of the prescription and keep a copy of all such prescriptions;
      (f) in accepting an electronic prescription, the pharmacist shall make determinations of the therapeutic equivalency as such prescriptions shall be processed in accordance with the requirements of section 29.7 of this Title, provided, however, that prescriptions for controlled substances shall be filled in accordance with the requirements of article 33 of the Public Health Law; and
      (g) in accepting an electronic prescription, the pharmacist shall be subject to the applicable requirements of Part 29 of this Title relating to unprofessional conduct, including but not limited to section 29.1(b)(2) and (3) of this Title.
   (8) . . .
      (i) . . .
         (a) . . .
         (b) . . .
         (c) . . .
         (d) . . .
         (e) . . .
      (ii) . . .
         (a) . . .
         (b) . . .
         (c) . . .
         (d) . . .
         (e) . . .
      (iii) . . .
         (a) . . .
         (b) . . .
         (c) . . .
         (d) . . .
         (e) . . .
      (iv) . . .
         (a) . . .
         (b) . . .
         (c) . . .
         (d) . . .
         (e) . . .
   3. Clause (c) of subparagraph (ii) of paragraph (8) of subdivision (b) of section 63.6 of the Regulations of the Commissioner of Education is amended, as follows:
(b) Pharmacies.
   (1) . . .
      (i) . . .
         (a) . . .
         (b) . . .
         (c) . . .
         (d) . . .
         (e) . . .
      (ii) . . .
         (a) . . .
         (b) . . .
         (c) . . .
         (d) . . .
         (e) . . .
      (iii) . . .
         (a) . . .
         (b) . . .
         (c) . . .
         (d) . . .
         (e) . . .
   (8) Counseling.
      (i) . . .
         (a) . . .
         (b) . . .
         (c) . . .
         (d) . . .
         (e) . . .
      (ii) Off-premises delivery. For a prescription that is delivered to
the patient or the person authorized to act on behalf of the patient off the premises of the pharmacy through mail delivery, a delivery service or otherwise, the pharmacist or pharmacy intern shall meet the requirements of this subparagraph.

(a) . . .

(b) . . .

(c) Except for instances covered by clause (d) of this subparagraph, which applies in those cases, if upon presentation of the prescription, the pharmacist or pharmacy intern determines that the prescription is a prescriber approved alternative drug, meaning a change in the drug originally prescribed exclusive of generic substitutions or interchangeable biological product substitutions, the pharmacist or pharmacy intern shall meet the following requirements in addition to the requirements of clauses (a) and (b) of this subparagraph:

1. . .

2. . .

3. . .

4. . .

5. . .

6. . .

7. . .

8. . .

9. . .

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, 91st A.D., No. E-121-17-00007-EP. Issue of December 27, 2017. The emergency rule will expire May 10, 2018.

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

Regulatory Impact Statement
1. STATUTORY AUTHORITY:
Section 207 of the Education Law grants general rulemaking authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

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

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

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

Section 6802 of the Education Law, as amended by Chapter 357 of the Laws of 2017, defines the terms “biological product” and “interchangeable biological product.”

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

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

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

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

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

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

An interchangeable product may be substituted for the reference product without the involvement of the prescriber.

Pursuant to Chapter 357, the New York State law permitted and established requirements for the substitution by pharmacists of generic drugs from their branded counterparts, but did not allow for the substitution of biological products. Chapter 357 updated the law to reflect the growing market of biological products and allows for the substitution of an FDA designated interchangeable biological product by a pharmacist when not prohibited by the prescriber.

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

The proposed amendment of paragraph (7) of subdivision (a) of section 63.6 of the Regulations of the Commissioner of Education provides that a pharmacist may, based upon his or her professional judgment, accept an electronic prescription from a prescriber, to the pharmacy of the patient’s choice except when the prescriber inserts an electronic direction to dispense the drug as written, otherwise, the prescriber’s electronic signature shall designate approval of substitution by a pharmacist of an interchangeable biological product. The proposed amendment further provides that notwithstanding any other provision of the Rules of the Commissioner of Education, the pharmacist may dispense the prescribed biological product at his or her regular price. The proposed amendment also requires that, in such instances, the pharmacist must record the date, hour and nature of the medical emergency on the back of the prescription and keep a copy of all such prescriptions.

The proposed amendment of clause (e) of subparagraph (ii) of paragraph (8) of subdivision (b) of section 63.6 of the Regulations of the Commissioner of Education includes substitutions of interchangeable biological products along with generic substitutions in the off-preciseme counseling requirements. The proposed amendment clarifies that permitted substitution of an interchangeable biological product is not a change in prescribed therapy and does not require the additional patient notifications and counseling that result from a prescriber approved alternative therapy.

3. NEEDS AND BENEFITS:
The proposed amendment is necessary to conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to Chapter 357. The proposed amendment defines the terms “biological product” and “interchangeable biological product.” The proposed amendment also sets forth the conditions under which the substitution of a biological product is required and establishes the appropriate method of communication by the pharmacist to the prescriber notifying the prescriber of the substitution of the biological product dispensed.

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

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

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

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

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

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

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

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

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

10. COMPLIANCE SCHEDULE:

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

**Regulatory Flexibility Analysis**

The purpose of the proposed amendment is to implement Chapter 357 of Law section 14 of 2017 (Chapter 357), which amended the Education Law by adding definitions for the terms "biological product" and "interchangeable biological product", effective October 23, 2017. Chapter 357 also amended the Education Law to set forth the conditions under which the substitution of a biological product is required and established the appropriate method of communication by the pharmacist to the prescriber notifying the prescriber of the substitution of the biological product dispensed.

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

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

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

Prior to Chapter 357, New York State law permitted and established requirements for the substitution by pharmacists of generic drugs from their branded counterparts, but did not allow for the substitution of biological products. Chapter 357 updated the law to reflect the growing market of biological products and allows for the substitution of an FDA designated interchangeable biological product by a pharmacist when not prohibited by the prescriber.

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

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

The proposed amendment is necessary to conform the Rules of the Board of Regents and of the Regulations of the Commissioner of Education to Chapter 357. It is anticipated that the regulated parties will be able to comply with the proposed amendments by the effective date.
The proposed amendment of clause (c) of subparagraph (ii) of paragraph (8) of subdivision (b) of section 63.6 of the regulations of the Commissioner of Education includes substitutions of interchangeable biological products along with generic substitutions in the off-premise counseling requirements. The proposed amendment clarifies that permitted substitution of the biological product dispensed on a prescription and does not require the additional patient notifications and counseling that result from a prescriber approved alternative therapy.

The proposed amendment does not impose any additional costs on regulated parties, beyond those required by statute. The proposed amendment adds the failure to identify an interchangeable biological product dispensed on a prescription by writing the name of the manufacturer and of the distributor, if different, on the prescription and on the label, except as otherwise provided in Education Law section 6816-a(3)(c), to the unprofessional conduct special provisions for the profession of pharmacy.

The proposed amendment does not adversely impact entities in rural areas. Thus, the Department does not anticipate that regulated parties will encounter any challenges with complying with this proposed rule. The proposed amendment provides that a pharmacist may, based upon his or her professional judgment, accept an electronic prescription from a prescriber, to the pharmacy of the patient’s choice except when the prescribable agents and the prescribable product dispensed are not included in the directory of substitution. The proposed amendment does not impose any new reporting, record-keeping, or other compliance requirements on local governments or have any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain these facts and one has not been prepared.

Rural Area Flexibility Analysis

The proposed rule is necessary to implement Chapter 357 of the Laws of 2017 (“Chapter 357”), which amended the Education Law to define the terms “biological product” and “interchangeable biological product”, set forth the conditions under which the substitution of a biological product is required, and establish the appropriate method of communication by the pharmacist to the prescriber notifying the prescriber of the substitution of the biological product dispensed, effective October 23, 2017. Additionally, the proposed amendment adds the failure to identify an interchangeable biological product dispensed on a prescription by writing the name of the manufacturer and of the distributor, if different, on the prescription and on the label, except as otherwise provided in Education Law section 6816-a(3)(c), to the unprofessional conduct special provisions for the profession of pharmacy. The proposed amendment also prohibits unlicensed persons from making determinations of the therapeutic equivalency as such determinations apply to interchangeable biological product substitution.

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

EMERGENCY

RULE MAKING

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

L.D. No. EDU-52-17-00012-E

Filing No. 240

Filing Date: 2018-03-09

Effective Date: 2018-03-11

Pursuant to the provisions of the State Administrative Procedure Act, notice is hereby given of the following action:

Action taken: Amendment of section 100.5(d)(12) of Title 8 NYCRR.

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

Finding of 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 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 2017-2018 school year or 2018-2019 school year only, a school district or nonpublic 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.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the March 12-13, 2018 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the March meeting, would be March 28, 2017, the date a Notice of Adoption would be published in the State Register. However, the proposed rule would allow students with disabilities to meet the Regents ELA and/or mathematics examinations eligibility conditions for the superintendent determination option by completing the requirements for the CDOS Commencement Credential beginning with students who are otherwise eligible to graduate in January 2018.

Therefore, a second emergency action is necessary at the February 2018 Regents meeting for the preservation of the general welfare in order to ensure that the rule remains continuously in effect until the rule can be permanently adopted.

Subject: Superintendent determination for certain students with disabilities to graduate with a local diploma.
Superintendent determination pathway for certain students with disabilities who are otherwise eligible for a local diploma

(12) Superintendent determination pathway for certain students with disabilities who are otherwise eligible for a local diploma when certain conditions are met.

(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 existing appeals, including the compensatory score option or the 56-64 low pass safety net option available under this section but who is otherwise eligible to graduate in June 2016 and thereafter shall be considered for a local diploma through the superintendent determination pathway in accordance with the requirements of this paragraph, provided that the student:

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

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

(c) took a mathematics Regents examination required for graduation pursuant to this subdivision and achieved a minimum score of 55 or successfully appealed a score of between 52 and 54 on such examination pursuant to paragraph (7) of this subdivision, except as otherwise provided in subparagraph (vi) 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; 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 proficiency of the student’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) of review, which 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, in person prior to the end of the student’s senior year, a copy of the completed form pursuant to 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.

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 Regents exams shall be considered an eligible student for the superintendent determination pathway pursuant to this paragraph, provided that the student has completed the requirements for the New York State career development and occupational studies commencement credential pursuant to section 100.6(b) of this Part.

(a) For students with disabilities who are otherwise eligible to graduate in either the 2017-2018 school year or the 2018-2019 school year only, the district, registered nonpublic high school or charter school may award the career development and occupational studies commencement credential to a student who has not met the requirements in section 100.5 of the Regulations of the Commissioner of Education is amended, effective March 11, 2018, as follows:

100.5 of the Regulations of the Commissioner of Education is amended, as follows: (a) the superintendent shall conduct a review to determine whether the student has otherwise demonstrated proficiency in the knowledge, skill s and abilities in English language arts and/or mathematics, in addition to reviewing any other subject areas required for graduation pursuant to clause (ii)(d) of this paragraph.

(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 higher proficiency of the State’s learning standards as measured by the corresponding Regents examination pursuant to clause (ii)(d) of this paragraph.

This notice is intended to serve 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. EUD-52-17-00012-EP, Issue of December 27, 2017. The emergency rule will expire May 7, 2018.

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

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 3294 (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 established 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 assessments, even with accommodations. For these students, the State provided a superintendent determination option for eligible students to graduate with a local diploma, beginning in June 2016 and thereafter. Under current regulations, to be eligible for the superintendent determination option to graduate with a local diploma, a student with a disability must have earned a minimum score of 55 on both the English Language Arts (ELA) and mathematics Regents examinations or successfully appealed a score between 52 and 54.

The proposed rule would, on or after December 12, 2017, allow students with disabilities who have not earned a minimum score of 55 on the ELA and/or mathematics Regents examinations or did not initiate an appeal of a score between 52 and 54 to meet the ELA and/or mathematics Regents examinations eligibility conditions for the superintendent determination option by completing the requirements for the New York State Career Development and Occupational Studies (CDOS) Commencement Credential. 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 proficiency. The proposed rule would also allow the school to award the CDOS Commencement Credential to a student with a disability who has not fully met all of the CDOS requirements, for purposes of eligibility for the superintendent determination option, provided that the student has demonstrated knowledge and skills in the commencement level 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 for students with disabilities who are otherwise eligible 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 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 1, 2 and 3.

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 process, but 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 revised rule), districts to conduct a superintendent determination review for students with disabilities who met the eligibility conditions for the superintendent determination option by completing the requirements for the CDOS Commencement Credential. It would also allow for 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 3.

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:
On or after December 12, 2017 (the effective date of the revised rule), 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. It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis
(a) Small businesses:
The proposed amendment 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 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 to a local or Regents diploma.
The proposed amendment applies to each of the 689 public school districts in the State, 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, if adopted on or after December 12, 2017, allows 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 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, 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. The principal must have evidence that the student has successfully completed relevant coursework 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 work-based learning activities many 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 option.

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

4. COMPLIANCE:
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 timeframes 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 chief administrators of each supervisory district in the State, from the chief school officers of the five big city school districts and from charter schools.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:
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 a local diploma.

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 the 2018-2019 school year only, to 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 timeframes or to exempt schools in rural areas from coverage by the proposed amendment.

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

Job Impact Statement

The proposed amendment is necessary to implement Regents policy to permit students with disabilities to meet the threshold eligibility conditions for the superintendent determination option by completing the requirements for the New York State Career Development and Occupational Studies (CDOS) Commencement Credential. In addition, the proposed rule would allow, for students with disabilities who are otherwise eligible to exit from high school in either the 2017-2018 school year or 2018-2019 school year only, to 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 student has otherwise demonstrated knowledge and skills in the com-
mencement. CDOS commencement credential under this exception may not use such
credential to meet the requirements for the career development and oc-
cupational 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 state-
ment is not required and one has not been prepared.

EMERGENCY/PROPOSED
RULE MAKING
NO HEARING(S) SCHEDULED
Laboratory Experiences Required to Take a Science Regents
Examination for Students in Certain State Agency Educational
Programs
Filing No. 256
Filing Date: 2018-03-13
Effective Date: 2018-03-13

PURSUANT TO THE PROVISIONS OF THE State Administrative
Procedure Act, NOTICE is hereby given of the following action:
Proposed Action: Amendment of section 100.5 of Title 8 NCCR.
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 expand op-
opportunities for students attending educational programs administered pur-
suant to Education Law § 112 and Part 116 or Part 118 of the Commis-
sioner’s regulations to participate in science Regents examinations by
permitting such students to complete the 1,200 minute laboratory experi-
ence requirement though a combination of hands-on and simulated
experiences.

Since the Board of Regents meets at fixed intervals, the earliest the
proposed rule can be presented for regular (non-emergency) adoption, af-
fer expiration of the required 60-day public comment period provided for
in the State Administrative Procedure Act (SAPA) sections 201(1) and (5),
would be the July 16-17, 2018 Regents meeting. Furthermore, pursuant to
SAPA section 203(1), the earliest effective date of the proposed rule, if
adopted at the July meeting, would be August 1, 2018, the date a Notice of
Adoption would be published in the State Register. However, the proposed
rule would expand opportunities for students to participate in science Regents examinations by allowing them to participate in the required lab-
oratory experiences while they are attending such programs. Therefore,
emergency action is necessary at the March 2018 Regents meeting for the
preservation of the general welfare in order to ensure that students who are
attending these educational programs are aware that the 1,200 minutes of
laboratory experience required to qualify to take a Regents examination in
science may be met through a combination of hands-on and simulated lab-
oratory experience. It is also necessary to ensure that such programs are
on notice that they must provide appropriate laboratory experiences in ac-
cordance with this regulation, and that school districts are on notice that
such students will be eligible for admission to a science Regents examina-
tion.

It is anticipated that the proposed rule will be presented for adoption as
a permanent rule at the July 16-17, 2018 Regents meeting, which is the
first scheduled meeting after expiration of the 60-day public comment pe-
riod prescribed in SAPA for State agency rule makings.
Subject: Laboratory Experiences Required to Take a Science Regents Ex-
amination for Students in Certain State Agency Educational Programs.
Purpose: To provide flexibility in meeting the science laboratory require-
ments for certain students.
Text of emergency/proposed rule: 1. Clause (d) of subparagraph (iv) of
paragraph (7) of subdivision (b) of section 100.5 of the Regulations of the
Commissioner of Education is amended as follows:

(d) Science, three units of credit and one of the Regents examinations in science or an approved alternative pursuant to section
100.2(f) of this Part. In order to qualify to take a Regents examination in
any of the sciences a student must compete 1,200 minutes of actual
hands-on (not simulated) laboratory experience with satisfactory docu-
mented laboratory reports, provided that, for a student who attend
educational programs administered pursuant to Education Law section
112 and Part 116 or Part 118 of this Title, the 1,200 minutes of laboratory
experience may be met through a combination of hands-on and simulated
laboratory experience. The 1,200 minutes of laboratory experience must
be in addition to the required classroom instruction associated with earn-
ing a unit of credit.

This notice is intended: to serve as both a notice of emergency adoption
and a notice of proposed rule making. The emergency rule will expire June 10, 2018.

Text of rule and any required statements and analyses may be obtained from:
Kirti Goswami, Education Department, 89 Washington Avenue,
Room 148, Albany, NY 12238, (518) 474-6400, email: legal@nysed.gov
Data, views or arguments may be submitted to: Angelica Infante-Green,
Deputy Commissioner, Education Department, 89 Washington Avenue,
Albany, NY 12238, (518) 474-5915, email: REGCOUNTENTS@nysed.gov
Public comment will be received until: 60 days after publication of this
notice.

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

Regulatory Impact Statement
1. STATUTORY AUTHORITY:
   Education Law section 101 continues the existence of the Education
   Department, with the Board of Regents at its head and the Commissioner of
   Education as the chief administrative officer, and charges the Depart-
   ment 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 Commis-
   sioner 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 examina-
   tions as to attainments in learning and to award and confer suitable certifi-
   cates, diplomas and degrees on persons who satisfactorily meet the
   requirements prescribed.
   Education Law section 209 authorizes the Regents to establish second-
   ary school examinations in studies furnishing a suitable standard of gradu-
   ation 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 institu-
   tions, and execute all educational policies determined by the Regents.
   Education Law section 304 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) set forth the course of study.
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 the laboratory experiences required in order to take a science
Regents examination for students in state agency educational programs and
correctional facilities.
3. NEEDS AND BENEFITS:
Pursuant to § 100.5(b)(7)(iv)(d) of the Commissioner’s regulations, in
order to qualify to take a Regents examination in any of the sciences, a
student must complete 1,200 minutes of actual hands-on (not simulated)
laboratory experience.

Because of the unique safety and security issues that may arise when
providing hands-on science laboratory experiences as part of the educa-
tional programs administered pursuant to Education Law § 112 and Part
116 or Part 118 of the Commissioner’s Regulations, the proposed regula-
tion would enable students attending such programs to complete the 1,200
minutes of laboratory experience required though a combination of hands-on and simulated experiences. The proposed amendment would,
therefore, expand opportunities for students to participate in science
Regents examinations by allowing them to participate in the required lab-
oratory experiences while they are attending such programs.
4. COSTS:
(a) Costs to State: none.
(b) Costs to local governments: none.
The proposed amendment is necessary to implement Regents policy relating to the laboratory experiences required in order to take a science Regents examination for students in state agency educational programs and correctional facilities. 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.

Job Impact Statement
The proposed amendment is necessary to implement Regents policy relating to the laboratory experiences required in order to take a science Regents examination for students in state agency educational programs and correctional facilities.

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

NOTICE OF ADOPTION
Licensing of Licensed Pathologists’ Assistants
I.D. No. EDU-48-17-00005-A
Filing No. 255
Filing Date: 2018-03-13
Effective Date: 2018-03-28

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

Action taken: Amendment of section 29.2; addition of section 52.48 and Subpart 79-20 to Title 8 NYCCR.

Statutory authority: Education Law, sections 207(not subdivided), 212(3), 6504(not subdivided), 6507(2)(a), 6509(9), 8850, 8851, 8852, 8853, 8854, 8855, 8856; L. 2016, ch. 497

Subject: Licensing of Licensed Pathologists’ Assistants.

Purpose: Establishes requirements for licensure including professional education, examination, fee and limited permit requirements.

Text or summary was published in the November 29, 2017 issue of the Register, I.D. No. EDU-48-17-00005-P

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

Text of rule and any required statements and analyses may be obtained from: Kirri 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.
NOTICE OF ADOPTION

Mandatory Quality Review Program/Mandatory Peer Review Program
I.D. No. EDU-48-17-00006-A
Filing No. 254
Filing Date: 2018-03-13
Effective Date: 2018-03-28

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

Action taken: Amendment of sections 29.10, 70.7, 70.8 and 70.10 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6509(9), 7408, 7410; L. 2017, ch. 364

Subject: Mandatory Quality Review Program/Mandatory Peer Review Program.

Purpose: Eliminates the exemption from the program for sole proprietorship and firms with two or fewer accounting professionals.

Text or summary was published in the November 29, 2017 issue of the Register, I.D. No. EDU-48-17-00006-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, Education Department, 89 Washington Avenue, 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.

NOTICE OF ADOPTION

Authorization of an Independent/Not-For-Profit Higher Education Institution to Offer Programs Leading to Postsecondary Degrees
I.D. No. EDU-48-17-00007-A
Filing No. 245
Filing Date: 2018-03-13
Effective Date: 2018-03-28

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

Action taken: Amendment of sections 3.58 and 3.59 of Title 8 NYCRR.

Amendment of sections 29.10, 70.7, 70.8 and 70.10 of Title 8 NYCRR.

Subject: Authorization of an independent/not-for-profit higher education institution to offer programs leading to postsecondary degrees.

Purpose: To establish requirements and fees for the authorization of independent/not-for-profit IHEs to offer degrees.

Text or summary was published in the November 29, 2017 issue of the Register, I.D. No. EDU-48-17-00007-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, Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 474-6400, email: kgoswami@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.
NOTICE OF ADOPTION

Transitional G Teaching Certificate and Pre-Professional Teaching Assistant Experience

I.D. No. EDU-48-17-00009-A
Filing No. 251
Filing Date: 2018-03-13
Effective Date: 2018-03-28

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

Action taken: Amendment of sections 52.21 and 80-5.22 of Title 8 N.Y.C.R.R.

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

Subject: Transitional G Teaching Certificate and Pre-Professional Teaching Assistant Experience.

Purpose: Expand the certification areas for which a Transitional G certificate may be issued and allow certain pre-professional teaching assistant experience to be counted towards experience for a professional certificate.

Text or summary was published in the November 29, 2017 issue of the Register, I.D. No. EDU-48-17-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 474-6400, email: kgoswami@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 Emergency Adoption and Proposed Rule Making in the State Register on November 29, 2017, the State Education Department (SED) received several comments:

1. COMMENT:
Several commenters raised a concern about the proposed amendment to the Regulations related to the Transitional G teaching certificate and the proposed addition of the language requiring that the post-secondary teaching experience must have been completed within the 10 years immediately preceding the application for the certificate. The concern is that there was no rationale for the 10-year limit, and that this will eliminate qualified former professors from the certificate pool during a time of STEM teacher shortages in the State.

DEPARTMENT RESPONSE:
The rationale supporting the addition of the 10-year limit to the regulations is that the Department must still ensure that the individual applying for a Transitional G certificate has the teaching skills necessary to walk into a classroom without any additional pedagogical coursework that would normally be required by anyone else pursuing a teaching certificate.

2. COMMENT:
One commenter was in support of the regulation change. However, this commenter raised a concern that Teaching Assistants (TA’s) currently have to quit their full time jobs as TA’s because this time doesn’t count as “teaching hours” when looking to get an initial certificate. Rather, they must take per diem substitute jobs because those hours do count. The commenter asks that the Department address this situation.

DEPARTMENT RESPONSE:
No response is necessary to the extent that the comment is supportive. In response to the concern raised by the commenter that is unrelated to the proposed amendment, the Regulations clearly specify that the duties of a teaching assistant are not the same as a teacher. Further, when using the 40 days in lieu of a formal student teaching experience, an individual is expected to be performing the duties of a teacher for 40 consecutive days with the same group of students.

3. COMMENT:
One commenter raised a concern that the proposed amendment related to the pre-professional certificate “rushes” people through teacher training, does not help, and creates more damage.

DEPARTMENT RESPONSE:
In response to this concern, the proposed amendment to Section 52.21 enables those who hold a preprofessional teaching assistant certificate to complete the student teaching or practica experience required in Section 52.21 of the Commissioner’s Regulations while employed under the preprofessional teaching assistant certificate, provided that the institution ensures that the candidate receives the same and/or similar student teaching experience as prescribed in Section 52.21 of the Commissioner’s Regulations at the location of the candidate’s employment. This change is to accommodate candidates who are employed under a pre-professional teaching assistant certificate in a school district or BOCES while completing the student teaching component of their educator preparation program. The intent of the Department is not to rush experience, rather to provide more flexibility in the existing regulations to those who may need it.

4. COMMENT:
A couple of commenters raised several concerns about the amendments to the Transitional G certificate and ask for several revisions. First, the commenters ask that the Department count adjunct teaching experience and teaching during a Ph. D. or post-doctoral fellowship in situations where the individual is the lead or co-lead instructor and responsible for a class towards the two years of satisfactory postsecondary teaching experience. The commenters also ask that the Department accept a range of “common titles” including professor, instructor, lecturer, teaching fellow, and adjunct professor to count as well. Next, the commenters request that the Department count two or more college courses per semester as “full-time” teaching for purposes of qualifying for the Transitional G certificate. Lastly, the commenters ask that the Department allow candidates with a range of degree titles within a discipline to obtain a Transitional G certificate for the certificate area to be taught. For example, a candidate with a Ph.D. in neuroscience could be able to obtain a Transitional G certificate in biology.

DEPARTMENT RESPONSE:
Experience gained by an individual who is employed as a professor at a college/university is acceptable, which would include an adjunct professor. Experience obtained by individuals who are teaching during a Ph. D. or post-doctoral fellowship in situations where the individual is the lead or co-lead instructor and responsible for a class may be acceptable if the college/university provides sufficient evidence to the Department that the experience is the same as or similar to that of a professor at the college/university.

In response to the commenters’ request for the Department to accept a range of titles, it is not the title that the Department is reviewing, but rather the duties of the experience to ensure that the individual is recognized by the college/university as a professor or recognized faculty member employed to teach at the college/university. To meet the two years of satisfactory teaching experience under the proposed amendment, the experience must include at least one course for at least two semesters per year for two years (e.g., one course in the Fall semester and one in the Spring semester in the 2016-2017 academic year and one course in the Fall semester and one course in the Spring semester in the 2018-2019 academic year).

In response to the last comment, the proposed amendment requires that the degree be in the area or a closely related area as the certificate area sought, which allows for a range of degrees. The Department would need to review the coursework to determine if the degree is in a closely related area.

NOTICE OF ADOPTION

Mentoring Program for Professional Certification

I.D. No. EDU-52-17-00008-A
Filing No. 248
Filing Date: 2018-03-13
Effective Date: 2018-03-28

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

Action taken: Amendment of section 80-3.4 of Title 8 N.Y.C.R.R.

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

Subject: Mentoring program for professional certification.

Purpose: Enable new teachers who are hired late in the academic year to have the same amount of time to participate in mentoring.

Text or summary was published in the December 27, 2017 issue of the Register, I.D. No. EDU-52-17-00008-P.

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

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

I.D. No. EDU-52-17-00009-A
Filing No. 252
Filing Date: 2018-03-13
Effective Date: 2018-03-28

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, Parts 30 and 80 of Title 8 NYCCR.

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

Subject: Teacher certification.

Purpose: Creation of a new certification area and tenure area in computer science.

Text or summary was published in the December 27, 2017 issue of the Register, I.D. No. EDU-52-17-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 474-6400, email: kgoswami@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 Emergency Adoption and Proposed Rule Making in the State Register on December 27, 2017, the State Education Department (SED) received several comments:

1. COMMENT:

Several commenters wrote to support the proposed amendment to create a new certificate and tenure area in computer science. One commenter states that it is reasonable and should pass. Another commenter explained that there is a significant need for computer science literacy in not only NY, but the entire country. The commenter explained that the biggest hurdle is building the “pipeline” for computer science. The commenter explains that because salaries for IT professions are significantly higher than that of a teacher, it can be very difficult to find individuals trained in computer science who have, or are willing to, make that shift. To solve this, the commenter suggests working with private companies to partner with the state and send volunteers into schools to teach in exchange for a promotion of their company—but also warns of the risk of partnering too closely.

DEPARTMENT RESPONSE:

No response is needed to the extent that the commenters were supportive of the creation of a computer science certificate and tenure area. In response to the concern that there will be difficulty finding properly certified candidates for teaching computer science when a salary in an IT profession is significantly higher, the Department recognizes this, however, the Statement of Continued Eligibility (SOCE) provided for in the regulation will help with this transition by allowing those who already teach computer science to continue doing so for ten years.

2. COMMENT:

Multiple commenters wrote to the Department raising concern with the proposed new certificate and tenure area in computer science. The commenters explained that creating a tenure area in computer science would end up decreasing the number of students exposed to computer science courses in high school rather than increase it because it would limit the number of educators allowed to teach computer science. In addition, the commenters are concerned with the resulting pool of candidates for these positions because many students look to major in computer science and are not also “oriented toward teaching.”

DEPARTMENT RESPONSE:

The proposed amendments are designed to provide as much flexibility as possible to teacher candidates, while still ensuring that they possess the minimum knowledge, skills and abilities to teach computer science. The proposed amendment also provides a statement of continued eligibility to allow those individuals who are already teaching computer science the choice between continuing the accrual of time under their current tenure area or switching to a new tenure area (computer science). In addition, please note that incidental teaching under section 80-5.3 for computer science will continue to be allowed under these proposed amendments.

3. COMMENT:

Several comments raised concerns related to the proposed new certificate and tenure area in computer science. These concerns include:

(a) That about 20% of technology education and business teachers are already competent in computer science instruction (including programming, coding, and automation content). Related to this, there are shortages and resource issues affecting these subjects and their teachers.

(b) Publications indicate that the desire right now for coding and programmers is only a short-term situation and will inevitably be replaced by the "next generation of A.I." soon. Related, due to the lag time with increasing certified teachers in a new certificate area, by the time goals are achieved, the need for these teachers will be gone.

(c) Given lag time for ramping up certification numbers for a new subject area toward any critical mass, by the time we achieve supply goals, the need will quite possibly be dissolved.

(d) The proposed amendment was drafted without proper public vetting of all issues and could result in more wrong-headed political and excessively quick decisions.

(c) There is skepticism by many and suggests that the Department look at how resources can be used to support current teacher education programs for technology education, business, science and CTE with accompanying professional development opportunities for current teachers so that school districts can effectively utilize the professionals already employed in their schools to address the goals of computer science instruction.

DEPARTMENT RESPONSE:

In response to the concerns raised, the Department agrees that there are currently educational technology, business, mathematics, and science teachers who are competent to teach computer science and have been doing so. In light of these concerns, the Department will evaluate the transition and if changes are necessary to effectively implement the new certificate area then the Department will do so.

While the Department recognizes that there may be skepticism in the field about the new computer science certification pathway and tenure area, there is strong support for the creation of a computer science certificate to address the needs of students so that such students can be adequately prepared and college and career ready in this new technological computer age. The Department also recognizes that there will be an initial period of time that the Department will need to monitor the supply and demand of qualified computer science teachers to ensure that the needs of school districts and BOCES are met.

4. COMMENT:

One commenter wrote to the Department to raise concerns about the proposal to create a new computer science certificate. One concern is that the proposal will actually impede innovation by school districts in meeting the growing demand for computer science classes. The commenter recommends delaying the proposal until the existing certificate and tenure areas have been reconsidered. Another concern raised is the fact that school districts are already having a difficult time finding qualified teachers. The commenter questions what individuals will be able to pass the certification and how many solely computer science teaching positions actually exist in districts.

The commenter raises the point that there are already qualified individuals capable of teaching computer science and they recommend that the statement of continued eligibility be extended indefinitely for those employed before September 1, 2022. The commenter recommends “micro-credentialing” to allow teachers certified in fields like math and science to gain an extension. Last, the commenter believes that computer science certification and instruction should “begin with standards.”

DEPARTMENT RESPONSE:

In response to the comment that the proposal will impede innovation by school districts in meeting the growing demand for computer science, the Department has provided for a transition with the statement of continued eligibility for those currently teaching computer science until September 1, 2022 in order to provide flexibility to school districts. During this time, the Department will evaluate the transition and if changes are necessary to effectively implement the new certificate area then the Department will do so.

The Department agrees that there are currently individuals employed that are capable of teaching computer science, and again, that is the basis for the statement of continued eligibility. In addition, please note that incidental teaching of computer science will continue to be allowed under these regulations.

In response to the tenure area concern, the proposal provides flexibility by allowing those individuals already teaching computer science the choice between continuing accrual of time under their current tenure area or switching to a new tenure area.

23
Lastly, in response to the concern about the standards, part of the Department proposal is to establish minimum and consistent standards for teachers of computer science, and to base these on recommendations from the K-12 Computer Science Framework (referred to in the Regents item memo above).

5. COMMENT:
One commenter wrote in support of the proposal to create a new certificate and tenure area in computer science. The commenter believes it is critical that students receive exposure and instruction in computer science before college, and knowledgeable teachers are essential. The commenter believes that computer science content and pedagogy are both important to this. The commenter also supports the Hunter College computer science proposal because it meets a balance of computer science pedagogy and content.

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

NOTICE OF ADOPTION

Alternative Teacher Education Models

I.D. No. EDU-52-17-00010-A
Filing No. 247
Filing Date: 2018-03-13
Effective Date: 2018-03-28

Pursuant to the provisions of the State Administrative Procedure Act, Notice is hereby given of the following action:

Action taken: Amendment of section 80-5.13 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 305, 3001, 3003, 3004 and 3009.

Subject: Alternative teacher education models.

Purpose: To provide flexibility in alternative teacher education models.

Text or summary was published in the December 27, 2017 issue of the Register, I.D. No. EDU-52-17-00010-P.

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

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

Teacher Certification in Health Education

I.D. No. EDU-13-18-00027-P

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

Proposed Action: Addition of sections 80-3.13 and 80-5.27 to Title 8 NYCRR.

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

Subject: Teacher Certification in Health Education.

Purpose: Creation of a Transitional K Certificate for certain New York State licensed Health Professionals to Teach Health Education.

Text of proposed rule: § 80-5.27 Transitional K certificate for physicians and physician assistants, nurse practitioners and registered professional nurses for a certificate in health education (all grades).

(a) General requirements.

(1) Time validity. The transitional K certificate shall be valid for three years from its effective date during which time a candidate shall complete all additional requirements for an initial certificate in the classroom teaching service in health education (all grades).

(2) Limitations. The transitional K certificate shall authorize a candidate to teach health education (all grades) only in a school district for which a commitment for employment has been made.

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

(1) Education. A candidate shall hold a bachelor’s degree or higher from a regionally or nationally accredited institution of higher education, a higher education institution that the commissioner deems substantially equivalent, or from an institution authorized by the Board of Regents to confer degrees.

(2) License and registration. Candidates shall hold a valid New York State license and registration pursuant to Title VIII of the Education Law in one of the following professional titles:

(i) Physician;
(ii) Physician assistant;
(iii) Nurse practitioner; or
(iv) Registered professional nurse.

(3) Coursework/Workshops: A candidate shall complete study in the areas of identifying and reporting suspected child abuse and maltreatment, which shall include at least two clock hours of coursework or training in the identification and reporting of suspected child abuse or maltreatment in accordance with the requirements of section 3004 of the Education Law. In addition, a candidate shall complete at least six clock hours, of which at least three must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention; and

(4) Employment and support commitment. The candidate shall have satisfactory evidence of having a commitment from a public school, non-public school or BOCES of at least three years of employment as a teacher within the public school, non-public school or BOCES in health education, which shall include a plan for mentoring and instructional support, over the three years of employment.

2. A new section 80-3.13 shall be added to the regulations of the Commissioner of Education as follows:

§ 80-3.13 Exception for Health Education (all grades). In lieu of meeting the education and examination requirements for an initial certificate, as prescribed in section 80-3.3(b) of this Subpart, a candidate who is issued a Transitional K certificate may meet the following requirements for an initial certificate as a teacher of health education (all grades):

(1) Coursework. The candidate shall complete nine semester hours of coursework that includes study in each of the following subjects:

(i) Human development and learning, including, but not limited to, the impact of culture, heritage, socioeconomic level, and factors in the home and community that may affect a student’s readiness to learn;

(ii) Teaching students with disabilities and special health-care needs within the general education classroom, including assistive technology; and

(iii) Curriculum and/or instruction, including instructional technology.

(2) Examination. Candidates shall submit evidence of having achieved a satisfactory level of performance on the assessment of all students and test and the New York State Teacher Certification Examination content specialty test in Health Education.

(b) Professional certificate. In lieu of meeting the education and examination requirements prescribed in section 80-3.4(b) of this Subpart, a candidate issued an initial certificate under the requirements of subdivision (a) of this section shall meet the following requirements for a professional certificate as a teacher of health education (all grades): (i) License and registration. The candidate shall hold a valid license and registration as a physician, physician assistant, nurse practitioner or registered professional nurse pursuant to title VIII of the Education Law.

(2) Coursework. The candidate shall complete while under the initial certificate, nine semester hours of coursework in pedagogical core which shall include coursework in each of the following areas of pedagogy:

(i) Teaching literacy skills methods—3 semester hours;

(ii) Instruction and assessment; and

(iii) Classroom management.

(3) Experience. The candidate shall satisfactorily complete three years of experience as a teacher of health education in any grade in any school which New York State certificate as a health education teacher is required. The candidate who completes this requirement in total or part through experience in New York public schools shall be required to participate in a mentor program in the first year of employment.

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

Data, views or arguments may be submitted to: Shannon Roberson, Education Department, Office of Higher Education, Room 797, Education Building, 89 Washington Avenue, NY 12234, (518) 474-6400, email: shannon.roberson@nysed.gov

24

Rule Making Activities

NYS Register/March 28, 2018
Proposed Amendment
The Department is proposing a new “Transitional K” pathway for the following New York State licensed and registered health professionals to obtain a health education certificate:

(a) Physician
(b) Physician assistant
(c) Nurse practitioner
(d) Registered professional nurse
To qualify for the Transitional K certificate, the candidate must meet the following requirements:

(1) Valid license and registration: The candidate must hold a valid New York State license and registration in one of the following professional titles:

• Physician
• Physician assistant
• Nurse practitioner
• Registered professional nurse

(2) Education: The candidate shall hold a bachelor’s degree or higher
(3) Workshops: The candidate must complete all the required workshops
(4) Employment and Support Commitment: The candidate must have an employment and support commitment from a public school, non-public school, or BOCES.

The Certificate will be valid for three years from the date issued, during which time the holder can pursue the additional requirements for an Initial certificate in the classroom teaching service, and eventually a professional certificate if they wish to do so. To obtain Initial certification, in addition to meeting the requirements for the Transitional K certificate, candidates will need to meet the following requirements:

(1) Pedagogical coursework: Complete nine semester hours of pedagogical coursework in the following:

• Human development and learning, including but not limited to: the impact of culture, heritage, socioeconomic level, and factors in the home and community that may affect a student’s readiness to learn;
• Teaching students with disabilities and special health-care needs within the general education classroom, including assistive technology;
• Curriculum and/or instruction, including instructional technology.

(2) Examination: Take and pass the EAS and the CST in Health Education.

To obtain Professional certification, in addition to the requirements for the Initial, candidates will need to complete an additional nine semester hours of pedagogical coursework in the following:

• Teaching Literacy Skills Methods—3 Semester hours
• Instruction and/or Assessment
• Classroom Management

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 regulations.

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
The purpose of the proposed addition of new Section 80-5.27 to the Regulations of the Commissioner of Education is to provide a new pathway for certain New York State licensed and registered health professionals to obtain a health education teaching certificate.

This proposed amendment applies to all individuals in New York State pursuing a certificate in the classroom teaching service in health education, who meet certain requirements, 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:
   Currently, a candidate pursuing an initial teaching certificate in health education through a “traditional” education preparation pathway must meet the following requirements:

(1) Completion of a NYS registered program in health education
(2) A recommendation by the higher education institution for certification in education through a Health Education edTPA
(3) Certification exams:
   • Health Education Content Specialty Test (CST)
   • Health Education edTPA
(4) Workshops: Dignity for All Students Act (DASA) 6-hour training
(5) Fingerprint clearance

In addition, candidates may pursue a health education certificate through a Transitional B pathway, as an additional certificate, and through individual evaluation.

Proposed Amendment
The Department is proposing a new “Transitional K” pathway for the following New York State licensed and registered health professionals to obtain a health education certificate: Physician, Physician assistant, Nurse practitioner, and Registered professional nurse.

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.
(d) Registered professional nurse.

To qualify for the Transitional K certificate, the candidate must meet the following requirements:

(1) Valid license and registration: The candidate must hold a valid New York State license and registration in one of the following professions:
- Physician
- Physician assistant
- Nurse practitioner
- Registered professional nurse
(2) Education: The candidate shall hold a bachelor’s degree or higher
(3) Workshops: The candidate must complete all the required workshops
(4) Employment and Support Commitment: The candidate must have an employment and support commitment from a public school, non-public school, or BOCES.

The Certificate will be valid for three years from the date issued, during which time the holder can pursue the additional requirements for an Initial certificate in the classroom teaching service, and eventually a professional certificate if they wish to do so. To obtain Initial certification, in addition to meeting the requirements for the Transitional K certificate, candidates will need to meet the following requirements:

(1) Pedagogical coursework: Complete nine semester hours of pedagogical coursework in the following:
- human development and learning, including but not limited to: the impact of culture, heritage, socioeconomic level, and factors in the home and community that may affect a student’s readiness to learn;
- teaching students with disabilities and special health-care needs within the general education classroom, including assistive technology; and
- curriculum and/or instruction, including instructional technology.
(2) Examination: Take and pass the EAS and the CST in Health Education.

To obtain Professional certification, in addition to the requirements for the Initial, candidates will need to complete an additional nine semester hours of pedagogical coursework in the following:

- Teaching Literacy Skills Methods—3 Semester hours
- Instruction and/or Assessment
- Classroom Management

3. COSTS:

The proposed amendment does not impose any costs on these teacher certification candidates.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment creates no adverse impact, it only creates flexibility for certain health professionals.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed addition of new Section 80-5.27 to the Regulations of the Commissioner of Education is to provide a new pathway for certain New York State licensed and registered health professionals to obtain a health education teaching certificate.

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.

REVISED RULE MAKING

NO HEARING(S) SCHEDULED

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

L.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 9 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) and (r) shall be added to section 80-4.3 of the Regulations of the Commissioner of Education to read as follows:

(o) Requirements for a grade-level extension to teach students with disabilities (grades 3-4).

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

(1) the candidate shall hold a valid initial or professional certificate in students with disabilities (birth - grade 2);
(2) the candidate shall submit satisfactory evidence of at least three school years of teaching experience; provided that at least 75 percent of the candidate’s time is spent teaching students with disabilities in grades 1 and/or 2 in 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;

(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 (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 (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;

(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 submit satisfactory evidence of a minimum of three years of teaching experience; provided that at least 75 percent of the candidate’s time is spent teaching students with disabilities in grades 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;

(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 9-12).

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 (7-12 generalist);
(2) the candidate shall show satisfactory evidence of a minimum of three years of teaching experience; provided that at least 75 percent of the candidate’s time is spent teaching students with disabilities in grades 7 and/or 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;

(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.

Revised rule compared with proposed rule: Substantial revisions were made in section 80-4.3.

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

26
requirement to “valid SWD certification at the adjacent level”, this pro-
title sought. However, such a statement is not needed for the proposed
education leading to an initial or professional certificate in the certificate
employing entity seeks to employ the candidate in a title with a demon-
icate need for SWD certified teachers is to amend the current “valid
proposed amendment can be met with candidates using the supplementary
workload, including the Office of Teaching Initiatives (OTI) staff which is
complexity of the certification structure, and creates a burdensome
certificates. The commenter explains that the “effort and complication”
of the comment about the subjective assessment of qualifications, the Of-
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 the 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 evi-
dence of learning or performance, as opposed to the completion of a col-
lege 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
ecessary 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, a majority of
the candidate’s teaching experience must be in the grade levels close to the
grade levels of the extension sought, and the candidate must complete ei-
ther 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 exten-
sion sought. While there is no specific requirement to document evidence
of learning or performance, the CTLE, the candidate is also required to have
three years of teaching experience within 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 re-
lated to the proposed extension to certain Students with Disabilities (SWD)
certificates. The comments assert that the proposal prioritizes add-on certi-
fication for special education over general education, that there is no qual-
ity assurance for credit hours or training, and that the proposal 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
pathway to certification 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, this population may
be vulnerable to a teacher teaching out-of-certificate with much less qual-
ity 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 practi-
cial knowledge for working with students in the grade levels of the exten-
sion that cannot be obtained with coursework alone.
5. COMMENT:
One commenter raised several concerns, including:
The proposal is only a temporary fix and the commenter recommends a long-term solution to address the entire field serving students with disabilities. The commenter questions whether there is a shortage in the students with disabilities field and whether this proposal will benefit the field. The commenter is concerned that the proposal will burden the Office of Teaching Initiatives (OTI). The commenter is concerned about ensuring the rigor of the 45 hours of CTLE required. 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.

DEPARTMENT RESPONSE:
In response to the comments above:
(a) While the proposal may be a temporary fix, the Department has been working with the field on developing long-term solutions to the issues facing those serving Students with Disabilities.

(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) Please see response to COMMENT #2 above.

(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 (75% of which must be in the grade level extension sought).

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 are 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:
In response to the concerns raised, the Department believes that because the individuals seeking extensions already have a base teaching certificate in a students with disabilities certificate area in an adjacent grade level, the majority of the pedagogical, human development, and behavioral management content for a new developmental level would already be included in educator preparation programs for students with disabilities. In addition, OTI and the Office of Special Education 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:
One commenter raised the concern that the extension for teachers with a current students with disabilities certification in grades 1-6 to teach PreK-K will not be prepared to teach in this grade band with either CTLE or just one college course. The commenter asserts that the first six years are the most important in intervention for students with disabilities. While the commenter recognizes 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 to teachers who are already certified teachers of students with disabilities to gain certification in a narrow adjacent grade band 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 bands.
Revised Rural Area Flexibility Analysis

Under SAPA 202-B(b)(2)(a), when a rule does not impose an adverse economic impact on rural areas and the agency finds it would not impose reporting, record-keeping, or other compliance requirements on public or private entities in rural areas, the agency may file a Statement in Lieu of. This rule has statewide application, providing procedure related to processing certain applications for special federal ballots. Accordingly, this rule has no adverse impact.

The amendment to the rule was totally nonsubstantive and technical. Specifically, the rule was amended to reflect a change in a Federal Post Card Application form. The form previously read “I am a U.S. citizen residing outside the U.S., and I intend to return”. The proposed regulation was simply amended to read as the form now reads, to wit: “I am a U.S. citizen living outside the country, and I intend to return.”

Revised Job Impact Statement

Under SAPA 201-a(2)(a), when it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. The proposed amendment provides for a change to processing certain applications for special federal voters. This rulemaking imposes no regulatory burden on any facet of job creation or employment.

The amendment to the rule was totally nonsubstantive and technical. Specifically, the rule was amended to reflect a change in a Federal Post Card Application form. The form previously read “I am a U.S. citizen residing outside the U.S., and I intend to return”. The proposed regulation was simply amended to read as the form now reads, to wit: “I am a U.S. citizen living outside the country, and I intend to return.”

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.

Department of Environmental Conservation

NOTICE OF ADOPTION

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

L.D. No. ENV-28-17-00003-A
Filing No. 244
Filing Date: 2018-03-12
Effective Date: 2018-03-28

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

Action taken: Amendment of Parts 44 and 50 of Title 6 NYCCR.

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

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

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

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


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

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

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

(i) within the bays, harbors, coves, rivers, tributaries and creeks that enter into Long Island Sound:
   (a) New York license holders who also hold federal fishing permits shall submit to the department the state the state (blue) copy of the Fishing Vessel Trip Report (NOAA Form No. 88-30) for the month or months identified in the written notification.
   (b) Commercial whelk license holders.
   (c) Any person who is the holder of a commercial whelk license issued pursuant to section 13-0330 of the Environmental Conservation Law shall complete and submit an accurate Fishing Vessel Trip Report for each commercial fishing trip, detailing all fishing activities and all species landed, on a form prescribed by the department. The license holder shall submit such fishing reports monthly to the department within 15 days after the end of each month. If a vessel has not fished during the month, it shall submit a report stating no trips during the month. Incomplete Fishing Vessel Trip Reports or unsigned reports will not satisfy these reporting requirements. Any New York license holder who is also the holder of a federal fishing permit issued by NOAA Fisheries Service must instead meet the reporting requirements specified by NOAA Fisheries Service. If requested in writing by the department, New York license holders who also hold federal fishing permits shall submit to the department the state (blue) copy of the Fishing Vessel Trip Report (NOAA Form No. 88-30) for the month or months identified in the written notification.
   (d) (i) within the bays, harbors, coves, ponds, rivers, and creeks that enter into Flanders Bay, Great Peconic Bay, Cutchogue Harbor, Little Peconic

Bay, Hog Neck Bay, Novack Bay, Southold Bay, Shelter Island Sound, Pips Creek, Greenport Cove, Greenvale-East Greenport-Bay, North Fork Harbor, Gardiners Bay, Napeague Bay and Fort Pond Bay;

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

(iii) within the bays, harbors, coves, ponds, rivers, and creeks that enter into Moriches Bay and Shinnecock Bay on the south shore of Long Island;

(iv) within the bays, harbors, coves, ponds, rivers, and creeks that enter into Raritan Bay, Arthur Kill and Kill Van Kull surrounding Staten Island; and

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

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

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

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

Paragraph 6 NYCCR 44.4(a)(4) is amended to read as follows:

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

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

Section 50.1 is amended to read as follows:

50.1 Marine Gastropods

(a) Definitions.

(1) ‘Carnivorous marine gastropods’ shall mean marine snails; including channeled whelk (‘Busyceycopatus canalicularus’), knobbed whelk (‘Busycyc canara’), and moon snails (‘Naticidae family’); that prey on other animals.

(2) ‘Whelk’ shall mean channeled whelk and knobbed whelk.

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

A new section 50.2 is adopted to read as follows:

50.2 Reporting Requirements and Confidentiality of Data.

(a) Commercial whelk license holders.

(1) Any person who is the holder of a commercial whelk license issued pursuant to section 13-0330 of the Environmental Conservation Law shall complete and submit an accurate Fishing Vessel Trip Report for each commercial fishing trip, detailing all fishing activities and all species landed, on a form prescribed by the department. The license holder shall submit such fishing reports monthly to the department within 15 days after the end of each month. If a vessel has not fished during the month, it shall submit a report stating no trips during the month. Incomplete Fishing Vessel Trip Reports or unsigned reports will not satisfy these reporting requirements. Any New York license holder who is also the holder of a federal fishing permit issued by NOAA Fisheries Service must instead meet the reporting requirements specified by NOAA Fisheries Service. If requested in writing by the department, New York license holders who also hold federal fishing permits shall submit to the department the state (blue) copy of the Fishing Vessel Trip Report (NOAA Form No. 88-30) for the month or months identified in the written notification.

29
(2) The Fishing Vessel Trip Report must be completed with all required information, except for information not yet ascertainable, and signed before the vessel arrives at the dock or lands the catch. Information that may be considered unascertainable before arriving at the dock or landing includes dealer name, dealer number, and date sold.

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

(c) In fulfillment of these reporting requirements, license holders subject to the provisions of this subdivision may choose to submit fishing trip data online at the Atlantic Coastal Cooperative Statistics Program website, www.acccsp.org. Complete and accurate fishing trip submissions to this website will satisfy the reporting requirements specified in this subdivision.

License holders who submit fishing data electronically must maintain a dated logbook, on board the specific fishing vessel, that details all fishing activities for each fishing trip. Data to be recorded in this logbook must include the vessel name, date sailed and date landed, species and weight of the species taken during the dated trip, and other information required by the department. Entries must be entered into the logbook before the vessel arrives at the dock or lands the catch.

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

(e) Confidentiality of fisheries data. Fisheries data, statistics or other information collected from individual permit or license holders by the department or available to the department from other states or the Federal government shall be confidential and shall not be disclosed except to an authorized user or when required under court order; provided, however, that the department may release or make public any statistics in an aggregate or summary form (with no less than three states reporting collectively to that state) which does not directly or indirectly disclose the identity of any person who submits such statistics.

For the purposes of these regulations an authorized user is any person that is employed by or under contract to the department or who is employed by or is under contract to the NOAA Fisheries Service, the U.S. Fish and Wildlife Service, the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, the South Atlantic Fishery Management Council, or the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, North Carolina, South Carolina, Georgia and Florida, and who has been designated by such agency or state, under the auspices of the Atlantic Coastal Cooperative Statistics Program to require confidential data as a means to fulfill their job and their job is related to fisheries management and conservation.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 50.1(2)(b).

Text of rule and any required statements and analyses may be obtained online at the Atlantic Coastal Cooperative Statistics Program website, www.acccsp.org. The website will satisfy the reporting requirements specified in this subdivision.

Initial Review of Rule

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

The only change to the proposed text after the comment period was to clarify the language of the proposed text, and did not affect the previous conclusion that there will be no impact on rural areas. The department received a comment which noted that the proposed text of 6 NYCRR 50.1(1) refers to “carnivorous marine gastropods,” while 50.1(2)(b) refers to “carnivorous ‘marine’ gastropods.” In order to maintain consistency in the proposed text, the department will revise the proposed language of 50.1(2)(b) to carnivorous “marine” gastropods. This is the only change that has been made to the proposed text since the original Regulatory Flexibility Analysis was published. This is not a substantive change and it does not affect the validity of the previous Rural Area Flexibility Analysis.

Revised Job Impact Statement

The original Job Impact Statement, as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended. The department received a comment which noted that the proposed text of 6 NYCRR 50.1(1) refers to “carnivorous marine gastropods,” while 50.1(2)(b) refers to “carnivorous gastropods.” In order to maintain consistency in the proposed text, the department will revise the proposed language of 50.1(2)(b) to carnivorous “marine” gastropods. This is the only change that has been made to the proposed text since the original Job Impact Statement was published. This is a change that will clarify the language and is not a substantive change, so it does not affect the validity of the previous Rural Area Flexibility Analysis.

Initial Review of Rule

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

Assessment of Public Comment

The Notice of Proposed Rule Making was published on July 12, 2017 in issue 28 of the State Register. There was a 45-day comment period which ended on August 25, 2017. There were sixty-eight comments submitted about the public comment period through the department’s website, gov-delivery e-mail and direct mailings to commercial whelk and crab permit holders.

It was brought to the department’s attention that there was an error on the department’s website during the public comment period. Between August 18 and August 25, 2017, the department mistakenly listed the comment period as closed. This error was corrected on August 25, 2017. In order to address the error, the department reopened the public comment period for an additional two weeks, starting on October 26, 2017 and closing on November 8, 2017 (published in the NY State Register, issue 43).

The department received 1,608 comments during the public comment period. The comments about the three proposed amendments are summarized separately below.

1. Terrapin Excluder Devices on Crab Traps

Most of the comments the department received were in support of the terrapin excluder device (TED) proposed rule (1,602 comments). The majority of these were from an identical form letter (1,565 comments). Comment: The comments in support of the proposed rule expressed concern about diamondback terrapin populations and supported the mandatory use of TEDs to keep terrapins from entering crab traps and drowning.

Response: The department appreciates these comments in support of the proposed rule and the Department’s efforts to protect diamondback terrapin populations.

Comment: Four comments were received that were opposed to adopting the proposed TED rule. These commenters stated that they have not seen terrapin in the areas where they fish and have not found terrapin in their traps. Therefore, they do not see a need to mandate the use of TEDs.

DEC response: Population studies of terrapin indicate that they are present in the waters of Long Island Sound, Conneticut, and Long Island. As trap-related mortality decreases, the terrapin population size may increase and the population area may expand.
Comment: There was one comment that questioned why the department selected the smaller sized TED rather than a “carnivorous marine gastropods” while 50.1(2)(b) refers to “carnivorous gastropods.”

DEC response: The department appreciates this comment and will revise the language of 50.1(2)(b) to carnivorous “marine” gastropods.

5. Comments Outside the Scope of the Proposed Rule

The department received a number of additional comments that were not directly related to the proposed rule and therefore will not be addressed as part of the assessment of comment for this rulemaking.

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Peekamoose Valley Riparian Corridor

L.D. No. ENV-13-18-00025-P

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

Proposed Action: Amendment of section 190.35 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), (d), (2)(m), 9-0105(1) and (3)

Subject: Peekamoose Valley Riparian Corridor.

Purpose: To establish a permit system to protect public safety and natural resources on the Peekamoose Valley Riparian Corridor.

Text of proposed rule: Addition of a new subdivision (i) to existing section 190.35 of 6 NYCRR.

(i) From May 15th through October 15th of each year on Saturdays, Sundays and state and federal holidays, no person shall enter the Peekamoose Valley Riparian Corridor east of the County Route 42 bridge crossing the Rondout Creek, an area that includes that portion of the Rondout Creek known as the Blue Hole, except under permit from the department.

Text of proposed rule and any required statements and analyses may be obtained from: Peter Frank, Bureau Chief, Forest Preserve, NYS DEC, 625 Broadway, Albany, NY 12233, (518) 473-9518, email: peter.frank@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.

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 and their protection, enhancement, preservation, allocation, and balanced utilization...and take into account the cumulative impact upon all such resources in promulgating any rule or regulation.” ECL section 3-0301(1)(d) authorizes the Department to “provide for the care, custody and control of the Forest Preserve.” ECL section 9-0105(1) authorizes the Department to “[e]xercise care, custody, and control of the several preserves, parks and other state lands described in [Article 9 of the ECL],” which includes Forest Preserve lands, Article XIV, Section 1 of the New York State Constitution provides that the lands of the Forest Preserve “shall be forever kept as wild forest lands.” 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],” and ECL 9-0105(3) authorizes the Department to “[m]ake necessary rules and regulations to secure proper enforcement of [ECL Article 9].”

2. Legislative objectives:

Paragraph 1 of Section 3 of Article XIV of the New York State Constitution provides that “forest and wild life conservation are . . . policies of the State.” Article XIV, Section 1 of the New York State Constitution provides that the lands of the Forest Preserve “shall be forever kept as wild forest lands,” and ECL sections 3-0301(1)(b) and 9-0105(1) give the Department jurisdiction to manage Forest Preserve lands. The Department is also authorized to promulgate rules and regulations for the use of such lands (see ECL sections 3-0301(2)(m) and 9-0105(3)). Consistent with this authority, the proposed regulations are crafted to protect natural resources and the health, safety and welfare of those who engage in recreational activities within the Peekamoose Valley Riparian Corridor of the Forest Preserve in the Catskill Park.

31
The Peekamoose Valley Riparian Corridor is an area encompassing more than 270 acres of Forest Preserve lands straddling the upper Rondout Creek along Peekamoose Road (Ulster County 42) in the Town of Denning in Ulster County. The Valley is a remote area in the heart of the Catskill Park and New York City’s Cats/Delaware watershed.

The Peekamoose Valley has been a popular public destination since the state began acquiring land in the Valley in the 1960’s. As early as 1971 the area had been discovered by more distant visitors, including those from urban areas to the south. Camping grew increasingly popular in this remote valley (several thousand people over the course of a typical summer), resulting in garbage and other unacceptable impacts. To address these impacts, the Department instituted a camping permit system and limited camping to designated primitive campsites.

Although in the past the public use of the valley has often been loud, occasionally unlawful, and near or above capacity, until recently most of the public use was concentrated in the Peekamoose primitive camping area. However, during the summer of 2015, day use of the area referred to as the “Blue Hole,” a large, deep and very cold swimming hole in the Rondout Creek immediately upstream of the primitive camping area, increased exponentially compared to previous years. This was due in part to coverage in social media, several websites, and national magazines touting the Blue Hole as “one of the best swimming holes in the nation.”

Due to the dramatic increase in public use, the natural resources of the area were rapidly becoming degraded, and serious public health and safety issues arose. There have been numerous attempts to address problems associated with this overuse. In 2015, these included parking restrictions, weekly trash pick-up, hiring staff during week-ends and the promulgation of special regulations in 2016 which further restricted use of the area by prohibiting fires, portable generators, audio devices (except at designated campsites), glass containers, and put in place additional parking restrictions and public use restrictions on the corridor which prohibits use from half hour after sunset to half hour before sunrise.

In spite of these attempts to address the area’s problems, public use continues to exceed the area’s carrying capacity, resulting in unsanitary conditions, threats to water quality, trampled vegetation and a dramatic degradation of the wild character of the area. While some modest improvements were made in 2017, use and interest in the Blue Hole has continued to increase. It is the Department’s position that the only way to allow for continued public use while preserving natural resources and protecting public safety would be to establish a day use permitting system.

Establishing a day use permitting system would require visitors to obtain a permit to access the Blue Hole. This would allow the Department to limit the number of visitors in the area and strike a balance between allowing the public to enjoy the natural resource while reducing environmental damage and enhancing public safety.

To accomplish this, the Department needs to amend existing section 190.35, Peekamoose Riparian Corridor. This is necessary to provide the Department with the regulatory ability to control access to the site. The proposed regulation will clearly define an area around the Blue Hole where a permit is necessary. The regulation would require a permit for stream access from the Route 42 bridge over the Rondout Creek (at the Trailer Field) east to the point where the Department property line and the Peekamoose Road meet, which encompasses a two mile stretch of the Rondout Creek. A day use permit would not be required for the campsites or the Peekamoose-Table Trail. A permit will only be required on weekdays and holidays from May 15th thru October 15th of each year.

The Department will make day use permits for the Blue Hole available on-line through our existing contract with Reserve America. Permits will be issued in the same way visitors make reservations for state campgrounds, however, day use permits for the Blue Hole would be issued at no cost to the user. Initially, the Department would limit the number of permits to 40 per day. Permits will be issued to individuals or groups of up to 6 people, resulting in a maximum of 240 people per day at the Blue Hole.

Outreach has been undertaken for this approach in meetings and interactions with local government officials, including the Town Supervisor, and in meetings with stakeholder organizations, including the Catskill Park Advisory Committee. The committee is made up of representatives of hiking, bicycling, camping, fishing and environmental organizations, as well as tourism agencies. In addition, information regarding the content of the regulation and the public process associated with it will appear in a widely-distributed newspaper in the area. The regulation will appear in the New York State Register for a 60 day public comment period in addition to being posted on the Department’s website.

No costs; Costs: No costs to the regulated community are anticipated to result from the adoption of the proposed regulations. The estimated cost associated with this rulemaking is $20,000 for administration of the day-use permit system, which will be paid for with revenue from the Department’s campground reservation fees. Permits will be issued at no cost to the user.

5. Local government mandates: This proposal will not impose any program, service, duty or responsibility upon any county, city, town, school district or fire district.

6. Paperwork: The proposed regulations will not impose any reporting requirements or other paperwork on any private or public entity.

7. Duplication: There is no duplication, conflict, or overlap with state or federal regulations.

8. Alternatives: The no-action alternative is not feasible since it does not adequately protect the Peekamoose Valley Riparian Corridor from overuse and abuse and does not protect the public health, safety and welfare of users. The existing generic 6 NYCRR Part 190 regulations for state lands are inadequate in protecting the Peekamoose Valley Riparian Corridor because of its unique characteristics, remote location and high level of public use.

Closing the area to public use is also not an acceptable alternative. Forest Preserve land is acquired for the use of and enjoyment by the public. ECL section 9-0301(1) provides that “all lands in the Catskill Park . . . shall be forever reserved and maintained for the free use of all the people . . .”. The no-action alternative to public use is not feasible until the area is degraded and trampled to a point where absolutely necessary to protect public health or the resource.

9. Federal standards: There is no relevant federal standard governing the use of state lands.

10. Compliance schedule: Once the regulations are adopted, they are effective immediately, and all persons will be expected to comply with them upon their effective date. The Department will educate the public about the regulations through information posted on the Departments’ web site, signage posted on the property, and by working with user groups and other stakeholders to help disseminate information regarding the regulations.

Regulatory Flexibility Analysis

1. Effect of rule: The proposed regulation requires visitors to the Blue Hole in the Peekamoose Valley Riparian Corridor of the Catskill Park to obtain a day-use permit to enter the area on weekends and holidays from May 15th thru October 15th of each year.

2. Compliance requirements: There are no compliance requirements for small businesses or local governments. Individuals will be required to obtain a permit online similar to the state’s campground reservation system. Visitors will be required to have the permit available to be provided upon request so that law enforcement and Department staff can assess compliance.

3. Professional services: There are no professional services that a small business or local government is likely to need to comply with the changes associated with this regulation.

4. Compliance costs: Persons who seek permits will not be charged a fee. The Department will assume administrative costs for the permit system which will come from Department revenue from its campground and reservation fees.

5. Economic and technological feasibility: The proposed rule does not require specialized technology for compliance; and is otherwise both economically and technologically feasible to comply with.

6. Minimizing adverse impact: There are no adverse impacts to small businesses or local governments. The permit system is being put in place to address public safety issues and prevent further degradation to natural resources within the corridor. It will also reduce congestion on local highways.

7. Small business and local government participation: DEC has complied with the New York State Administrative Procedure Act (SAPA) section 202-b(6) by assuring that small businesses and local governments have been given an opportunity to participate in the rule making. This participation has occurred through meetings and interaction with local government officials, including the Town Supervisor, and in meetings with stakeholder organizations, including the Catskill Park Advisory Committee. The committee is made up of representatives of hiking, bicycling, camping, fishing and environmental organizations as well as tourism agencies.

In addition, information regarding the content of the regulation and the public process associated with it will appear in a widely-distributed newspaper in the area. The regulation will appear in the New York State Register for a 60 day public comment period in addition to being posted on the Department’s website.

Furthermore, the Department will be accepting public comments to the Notice of Proposed Rulemaking and will be providing responses to any comments that are received. The regulations will be available for review on the Department’s website.

8. Penalties for violations of NYCRR Part 190 are prescribed under
Environmental Conservation Law Section 71-9703.1: “1. Except as otherwise provided in subdivision 4, 5, 6 or 7 of this section, any person who violates any provision of article 9 or the rules, regulations or orders promulgated pursuant thereto or the terms of any permit issued thereunder, or who fails to perform any duty imposed by any provision thereof shall be guilty of a violation, and, upon conviction, shall be punished by a fine of not more than two hundred fifty dollars, or by imprisonment for not more than fifteen days, or by both such fine and imprisonment, and in addition thereto shall be liable to a civil penalty of not less than ten nor more than one hundred dollars.” No changes or modifications are proposed.

Rural Area Flexibility Analysis
Adoption of a new subdivision 190.35(i) to 6 NYCRR will address overuse and increase public safety on the Peekamoose Valley Riparian Corridor by implementing a permit system for week-ends and holidays from May 15th through October 15th while still providing a quality outdoor experience for users. A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, recordkeeping or other compliance requirements on rural areas. The proposed regulations relate solely to protecting public safety and natural resources on the Peekamoose Valley Riparian Corridor.

Job Impact Statement
Adoption of a new section 190.35(i) to 6 NYCRR will address overuse and increase public safety on the Peekamoose Valley Riparian Corridor by implementing a permit system for week-ends and holidays from May 15th through October 15th while still providing a quality outdoor experience for users. 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 regulations relate solely to protecting public safety and natural resources on the Peekamoose Valley Riparian Corridor.

Department of Financial Services

EMERGENCY RULE MAKING

Public Retirement Systems

| I.D. No. | DFS-13-18-00012-E |
| Filing No. | 242 |
| Effective Date | 2018-03-09 |

Pursuant to the provisions of the State Administrative Procedure Act, Notice is hereby given of the following action: Action taken: Amendment of Part 136 (Regulation 85) of Title 11 NYCRR.

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

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

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

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


Subject: Public Retirement Systems.

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

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

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

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

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

(c)(a) Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the [fund].

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

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

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

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

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

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

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

(h) Placement agent or intermediary shall mean any person or entity, including registered lobbyists, directly or indirectly engaged and compensated by an investment manager (other than [an] a regular employee of the investment manager) to promote investments or solicit investment by [assist the investment manager in obtaining investments by the fund, or otherwise doing business with] the [fund] Fund, whether compensated on a flat fee, a contingent fee, or any other basis. Regular employees of an investment manager are excluded from this definition unless they are employed principally for the purpose of securing or influencing the decision to secure a particular transaction or investment by the Fund (obtaining investments or providing other intermediary services with respect to the fund.) For purpose of this paragraph, the term “employee” shall include any person who would qualify as an employee under the federal Internal Revenue Code of 1986, as amended, but shall not include a person hired, retained or engaged by an investment manager to secure or influence the decision to secure a particular transaction or investment by the Fund.

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

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

(i) Retirement System shall mean the New York State and Local Em-
Rule Making Activities

NYS Register/March 28, 2018

employees’ Retirement System and the New York State and Local Police and Fire Retirement System.

(1) Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records.

Administrative services shall not include services provided to the Fund relating to Fund investments.

(k) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller; (2) an officer or employee of the [fund], (3) an individual or entity doing business with the [fund] Fund, or (4) an individual or entity that has a substantial financial interest in an entity doing business with the [fund] Fund. For the purpose of this paragraph, the term “substantial financial interest” shall mean that the control of the entity, whereby “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity merely as a result of having a pecuniary interest in an entity.

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

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

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

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

(g) The Comptroller shall:

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

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

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

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 6, 2018.

Text of rule and any required statements and analyses may be obtained to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 6, 2018.

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

FSL section 202 establishes the office of the Superintendent and designates the Superintendent to be the head of the Department of Financial Services (“DFS”).

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

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

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

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

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

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

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

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

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

4. Costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department or other state government agencies or local governments.

Investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

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

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

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

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

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

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

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

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

- A ban on political contributions by any employee of any placement agent seeking to do business with the Fund;
- A requirement that any placement agent seeking to do business with the Fund be registered as a broker-dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority (“FINRA”);
- A requirement that any placement agent seeking to do business in New York register with the Department; and
- A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association (“SIFMA”), representing hundreds of securities firms, banks, and asset managers, commented that the proposed rule (1) inadvertently limits the access of smaller fund managers to the Fund; (2) restricts the number and types of advisers that could be utilized by the Fund; (3) creates an inherent conflict between federal and state law that would make it impossible to do business with the Fund while complying with both; and (4) adds duplicative regulation in an area already substantially regulated at the state level and that is primed for further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal requirements on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placed agent initiatives are finalized.

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

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

Regulatory Flexibility Analysis

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

The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committee, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls, increased government transparency, and strengthened supervision by the Department. Nevertheless, recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund’s control environment is insufficient to protect the integrity of the state employees’ retirement systems. The Third Amendment to Insurance Regulation 85 will adopt an immediate total ban on the use of placement agents to ensure sufficient protection of the Fund’s members and beneficiaries, and safeguard the integrity of the Fund’s investments. Further, the rule defines “placement agent or intermediary” in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

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

This rule will affect investment managers and other intermediaries (other than OSC employees) who provide technical or professional services to the Fund related to Fund investments. The rule will prohibit investment managers from using the services of a placement agent unless such agent is a regular employee of the investment manager and is acting in a brokerage capacity, or the specific investment is mandated by the Board. Most investment managers and placement agents may come within the definition of "small business" as set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

The rule bans the use of placement agents in connection with investments by the Fund. This may adversely affect the business of placement agents, who will lose opportunities to earn profits in connection with investments by the Fund. Nevertheless, as a result of recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments. This rule will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this rule is directed at the State Comptroller; employees of the Office of State Comptroller; and investment managers, placement agents, consultant or advisors - none of which are local governments.

2. Compliance requirements: None.

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

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

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

6. Minimizing adverse impact: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund. Nevertheless, as a result of recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments.

7. Small business and local government participation: In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also brief the representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor’s Office, Comptroller’s Office and Finance Department.
A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

**Rural Area Flexibility Analysis**
1. Types and estimated numbers of rural areas: Investment managers, placement agents, consultants or advisors that do business in rural areas as defined under State Administrative Procedure Act Section 102(10) will be affected by this rule. The rule bans the use of placement agents in connection with investments by the New York State Common Retirement Fund (“the Fund”), which may adversely affect the business of placement agents and of other entities that utilize placement agents and are involved in Fund investments.
2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, with the exception of requiring investment managers, consultants and advisors who provide services to the Fund to discontinue the use of placement agents.
3. Costs: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund.
4. Minimizing adverse impact: The rule does not adversely impact rural areas.
5. Rural area participation: A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

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

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

---

**Department of Law**

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

**Change of Office Address (Lower Manhattan Location)**

L.D. No. LAW-13-18-00010-P

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

**Proposed Action:** This is a consensus rule making to amend sections 10.8, 12.2, 13.6, 50.1, 53.1, 80.1, 91.11, 94.1, 96.2, 120.5, 400.4 and parts 16-25, 121 and 200 of Title 13 NYCRR.

**Statutory authority:** State Administrative Procedure Act, section 207

**Subject:** Change of office address (Lower Manhattan location)

**Purpose:** To update new address of the Lower Manhattan location.

**Text of proposed rule and any required statements and analyses may be obtained from:** Michael Jerry, Department of Law, 120 Broadway, New York, NY 10271, (212) 416-6805, email: michael.jerry@ag.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.

**Consensus Rule Making Determination**

This is a consensus rulemaking, which merely changes the address and contact info for the Lower Manhattan location of the Office of the Attorney General as a result of the office moving to a new location. The agency has determined that would be no objection from any person.

---

**Office for People with Developmental Disabilities**

**NOTICE OF ADOPTION**

**SNAP Benefit Offset**

L.D. No. PDD-51-17-00005-A

Filing No. 249

Filing Date: 2018-03-13

Effective Date: 2018-03-28

Pursuant to the provisions of the State Administrative Procedure Act, notice is hereby given of the following action:

**Action taken:** Amendment of Parts 671 and 686 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.07, 13.09(b), 16.00 and 41.25

**Subject:** SNAP Benefit Offset.

**Purpose:** To update the SNAP benefit offset and the amount that each individual must pay to providers.

**Text or summary was published** in the December 20, 2017 issue of the Register, L.D. No. PDD-51-17-00005-EP.

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

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

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

**Initial Review of Rule**

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

---

**Public Service Commission**

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

**Commission Oversight of Distributed Energy Resource Suppliers**

L.D. No. PSC-13-18-00014-P

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

**Proposed Action:** The Public Service Commission is considering modifying the terms of the Uniform Business Practices for Distributed Energy Resource Suppliers (UBP-DERS) that provide distributed energy resource (DER) oversight.

**Statutory authority:** Public Service Law, sections 2, 5(1), (2), 22, 53, 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9) and (12)

**Subject:** Commission oversight of distributed energy resource suppliers.

**Purpose:** To protect customers and utilities in the receipt of services from distributed energy resource suppliers.

**Substance of proposed rule:** The Public Service Commission is considering modifying the terms of the Uniform Business Practices for Distributed Energy Resource Suppliers (UBP-DERS) that provide distributed energy resource (DER) oversight to include provisions related to termination fees, production guarantees, and escalation clauses. Distributed energy re-
sources include a broad category of end-use energy efficiency, demand response, distributed storage, and distributed generation resources not owned by utilities that can have a beneficial impact on the operation of utility distribution systems. DER Suppliers are utility customers or other entities that participate in Commission-authorized DER programs or markets. Regarding a limit on or other standards applicable to early termination fees for all DER suppliers, the Commission is considering (a) whether a limit on early termination fees charge to mass market customers should be applied to all DER suppliers, to a subset of all DER suppliers; (b) whether the limit on early termination fees, consistent with the limit on ESCO early termination fees, should be set at (i) $100 for any contract with a remaining term of less than 12 months, (ii) $200 for any contract with a remaining term of more than 12 months, (iii) twice the estimated average monthly bill, provided that an estimate of an average monthly bill and amount of any termination fee was provided to the customer at the time of the sales agreement, or (iv) a different amount, or using a different method than a fixed amount; and (c) whether contracts involving the installation of DER equipment on customer property should be excluded from this limit or be subject to a modified version of it. Regarding production guarantees, the Commission is considering (a) whether community distributed generation (CDG) or on-site mass market distributed generation providers should be required to include a production guarantee in their contracts with mass market customers; (b) whether that requirement should be applied to all contract types, or only to a subset of the standard contract types, which are purchases, leases, and power purchase agreements; and (c) whether there should be any further requirements on the level of production guaranteed or on the compensation if a guarantee is not met. Regarding escalation clauses, the Commission is considering (a) whether a limit should be applied to the escalation where a CDG or on-site mass market distributed generation contract with a mass market customer includes provisions for escalation of pricing over the term of the contract; and (b) whether escalation provisions should be limited to a maximum of three percent annually. The full case record may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the provisions discussed 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Eligibility of an ESCO to Market to and Enroll Residential Customers

L.D. No. PSC-13-18-00015-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 whether Astral Energy, LLC (Astral), an energy services company (ESCO), ability to market to and enroll residential customers. The Commission is considering whether Astral Energy, LLC (Astral), an energy services company (ESCO), ability to market to and enroll residential customers. The Commission is considering whether Astral Energy, LLC (Astral), an energy services company (ESCO), ability to market to and enroll residential customers.

Substantive authority: Public Service Law, sections 4, 65 and 66

Subject: Eligibility of an ESCO to market to and enroll residential customers.

Purpose: To consider whether Astral should be allowed to market to and enroll residential customers following a suspension.

Substantive purpose: The Public Service Commission (Commission) is considering the petition filed by Astral Energy, LLC (Astral), an energy services company (ESCO), on February 7, 2018, seeking the reinstatement of its eligibility to market to and enroll residential customers. ESCO’s may provide electricity and natural gas commodity to customers in a manner consistent with the Public Service Law, the Commission’s regulations and orders, and the Uniform Business Practices (UBP). If an ESCO fails to comply with the Public Service Law, Commission regulations and orders, and the UBP, it may be subject to consequences, including the suspension of the ESCO’s ability to market to and enroll new customers. On October 15, 2015, the Commission issued an order detailing a number of apparent failures on the part of Astral to comply with Commission requirements and requiring Astral to show cause why the Commission should not suspend Astral’s eligibility to market to and enroll new customers. On November 6, 2015, the Commission issued an Order suspending Astral’s eligibility to market to and enroll non-residential and non-residential customers. On December 16, 2016, the Commission issued an Order reinstating Astral’s eligibility to market to and enroll non-residential customers. In its February 7, 2018 petition, Astral states that it has continued to implement and follow the telemarketing quality assurance program and telemarketing in-person training manuals contained in its compliance policy and protocols manual filed with the Department. The full case record, including the February 7, 2018 petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Electronic Deferred Payment Agreements (DPA)

L.D. No. PSC-13-18-00016-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 filing by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) on December 29, 2017, to implement Electronic Deferred Payment Agreements (DPA) within its service territory. Pursuant to Public Service Law Section 37, utilities, such as National Grid, are required to offer residential customers the opportunity to pay off any arrears owed to National Grid over time through a DPA prior to discontinuing service to the customer for non-payment. Under this proposal, National Grid would implement a process to give customers the option of negotiating a DPA over the phone and signing it electronically, as an alternative to signing a paper version. The full text of the proposal may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Public comment will be received until: 60 days after publication of this notice.
**PROPOSED RULE MAKING**

**NO HEARING(S) SCHEDULED**

**Notice of Intent to Submeter Electricity and Waiver Request**

**I.D. No. PSC-13-18-00017-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 notice of intent of 125 East 144 Street Holdings LLC to submeter electricity at 414 Gerard Avenue, Bronx, New York and request for a waiver of 16 NYCRR section 96.5(k)(3).

**Statutory authority:** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Notice of intent to submeter electricity and waiver request.

**Purpose:** To consider the notice of intent to submeter electricity and waiver request.

**Substance of proposed rule:** The Commission is considering the notice of intent of 125 East 144 Street Holdings LLC to submeter electricity at 414 Gerard Avenue, Bronx, New York and request for a waiver of 16 NYCRR section 96.5(k)(3).

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

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

(17-E-0238SP2)

**PROPOSED RULE MAKING**

**NO HEARING(S) SCHEDULED**

**Notice of Intent to Submeter Electricity**

**I.D. No. PSC-13-18-00019-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 notice of intent of City Centre Associates, LLC to submeter electricity at 301 East State Street, Ithaca, 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:** Notice of intent to submeter electricity.

**Purpose:** To consider the notice of intent to submeter electricity.

**Substance of proposed rule:** The Commission is considering the notice of intent of City Centre Associates, LLC to submeter electricity at 301 East State Street, Ithaca, New York.

**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-0009SP1)
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-0134SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-13-18-00020-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 notice of intent of ERY Retail Podium LLC to submeter electricity at 560 West 33rd Street, New York, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Notice of intent to submeter electricity.

**Purpose:** To consider the notice of intent to submeter electricity.

**Substance of proposed rule:** The Commission is considering the notice of intent of ERY Retail Podium LLC (Owner) filed on February 27, 2018, to submeter electricity at 560 West 33rd Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By stating its intent to submeter electricity, ERY Retail Podium LLC, has requested authorization to take electric service from Con Edison 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 notice of intent may be reviewed online at the Department of Public Service website: 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) 474-6530, email: secretary@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-0136SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-13-18-00022-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 notice of intent of ERY Retail Podium LLC (Owner) filed on February 27, 2018, to submeter electricity at 560 West 33rd Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By stating its intent to submeter electricity, ERY Retail Podium LLC, has requested authorization to take electric service from Con Edison 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 notice of intent may be reviewed online at the Department of Public Service website: 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) 474-6530, email: secretary@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-0137SP1)
PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Reconciliation of Property Taxes

I.D. No. PSC-13-18-00023-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 New York American Water, Inc. (NYAW) for permission to reconcile its property tax expense for the Village of Sea Cliff to account for a past over valuation of its real property.

Statutory authority: Public Service Law, section 89-c

Subject: Reconciliation of property taxes.

Purpose: To consider NYAW’s request to reconcile property taxes.

Substance of proposed rule: The Commission is considering the petition of New York American Water, Inc. (NYAW) for permission to reconcile its property tax expense for the Village of Sea Cliff to account for a past over valuation of its real property. The petition states that due to errors by the Company, its real property in Sea Cliff was overvalued for past years, which led to NYAW paying, and collecting from ratepayers, more property tax than properly required. Since discovering the over-collection, NYAW has cancelled one surcharge (RAC/PTR Surcharge) intended to recover excess property tax expenses, and reduced a second surcharge (Incremental Property Tax Surcharge) to reflect the accurate level of taxes. NYAW states that it calculates past over-collections from ratepayers at $1,723,499, without interest. The Company proposes to use this amount owed ratepayers to offset existing regulatory assets, amounts the Commission has authorized the Company to collect from ratepayers: $865,067 from property tax refunds in past years, and $1,160,215 owed under the NYAW’s rates, the Company anticipates a probable over-collection of $2,861,486 over the course of its current four-year rate plan. To accelerate the return of this money to ratepayers, the Company has reduced its Incremental Property Tax Surcharge, which would return $2 million. The whole amount is not used because of uncertainty of future tax assessments to ratepayers over the rate plan. The Company proposes than any remaining money owed ratepayers be refunded through the annual RAC/PTR filing process, which allows the company to recover revenue shortfalls in the prior year. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

Department of State

EMERGENCY RULE MAKING

Establishment of the Identity Theft Prevention and Mitigation Program

I.D. No. DOS-52-17-00013-E

Filing No. 243

Filing Date: 2018-03-09

Effective Date: 2018-03-09

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

Action taken: Repeal of Parts 4600, 4601 of Title 21 NYCRR; renumbering of Parts 4602-4605 and Parts 4607-4608 of Title 21 NYCRR to Parts 220-225 of Title 19 NYCRR; and addition of Part 226 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 91, 94-a(3)(6) and (9)

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

Specific reasons underlying the finding of necessity: The massive data breach experienced by Equifax, a large Consumer Credit Reporting Agency, has exposed millions of people to fraud and economic ruin. The “theft” of these individual’s identities begins with such breach. Equifax (and other such entities experiencing data breaches) is under an obligation to them to provide timely information concerning the status of their credit histories, what is being done to protect them and how they can protect themselves. These rules include mechanisms to facilitate the provision of such information and assistance by: clarifying the status of a “victim of identity theft” as inclusive of an individual who has been victimized by a security breach; requiring, among other things, the filing of a form with the Division that CCRAs establish and notify the Division of a point of contact for Division inquiry and fact finding, and for such point of contact to be available for such dialogue for general matters during regular business hours and within 24 hours in event of a notification of a security breach.

Statutory authority: Public Service Law, sections 65 and 66

Subject: SC No. 3—Multiple-Dwelling Service.

Purpose: To consider the proposal filed by KeySpan Gas East Corporation d/b/a National Grid to revise its gas tariff schedule, P.S.C. No. 1, to eliminate an outdated provision under Service Classification (SC) No. 3—Multiple-Dwelling Service.

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: 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.

Reconciling 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.
breach, and the disclosure to the Division and consumers of proprietary products offered by CORA to consumers for the prevention of identity theft, with information as to the fees and contractual provisions associated therewith. Such information will better enable consumers to make informed choices as to what credit monitoring or protection product is suitable for them. It is necessary to immediately adopt this rule so that such information on the Division’s website is available in the event of another breach.

Subject: Establishment of the Identity Theft Prevention and Mitigation Program

Purpose: To facilitate the timely provision of information and assistance to victims of identity theft.

Text of emergency rule: A new Chapter VIII is added to Title 19; Parts 4600 and 4601 of Title 21 are repealed; Parts 4602–4605 and 4607–4608 of Title 21 are renumbered as Parts 220–223 of Title 19, respectively; and a new Part 226 is added to Title 19 to read as follows:

Part 226 Identity Theft Prevention and Mitigation Program

§ 226.1 Purpose.
The Division of Consumer Protection was created within the Department of State to protect the people of New York State from economic harm resulting from unscrupulous and questionable business practices. The Division is authorized to promulgate rules and regulations to achieve this objective, including the authority to establish and administer the Identity Theft Prevention and Mitigation Program. The Program is intended to:

(1) inform consumers about how to protect their personal identifying information;

(2) help consumers prevent identity theft, including taking steps to protect their identities once their personal identifying information has been compromised, and

(3) help consumers mitigate issues related to the theft of their identities. These regulations establish requisites and procedures to provide consumers with the means to protect themselves against identity theft and to assure that appropriate assistance and complaint resolution mechanisms are in place for the protection and repair of their financial and credit history in the event their personal identifying information has been compromised.

§ 226.2 Definitions.
(a) Victim of identity theft. The term “victim of identity theft” shall mean any natural person whose personal information has been wrongfully obtained by another or is used in some way that involves fraud or deception, typically for economic gain.

(b) Personal information. The term “personal information” shall mean any information concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify such natural person.

(c) Consumer Reporting Agency. The term “consumer reporting agency” means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports or invesitigative consumer reports to third parties.

(d) Consumer credit reporting agency. The term “consumer credit reporting agency” means a consumer reporting agency that regularly engages in the practice of assembling or evaluating and maintaining, for the purpose of furnishing consumer credit reports to third parties, consumer credit information.

§ 226.3 Consumer Assistance.
Persons requesting assistance from the Division to respond to an identity theft concern shall complete a consumer complaint assistance form as prescribed by the Division. The Division, where appropriate, may undertake any activities necessary to help a victim of identity theft obtain any such information and assistance from any entity identified in Executive Law § 94–a(3)(9)(ii), including, but not limited to, consumer credit reporting agencies, as is necessary to prevent the utilization of such consumer’s personal identifying information in a way that inures to such consumer’s economic detriment, or to mitigate the impacts when such consumer’s personal identifying information has been used to such consumer’s economic detriment.

§ 226.4 Consumer Educational Materials.
The Division shall make available upon request to any person identifying themselves as a victim of identity theft information that provides such victim with guidance in understanding and addressing concerns surrounding an identity theft crime.

§ 226.5 Request for Information.
When the Division of Consumer Protection acts on behalf of a consumer to investigate, mediate, and/or mitigate an identity theft complaint, the Division may require substantiating and/or supporting documentation and/or records from any State agency, including the Division of State Police, State public authority, municipal department or agency, county or municipal police department, and any non-governmental entity, including, but not limited to, the Division of Consumer Protection. The credit reporting agency shall comply with the written request of the Division for such documentation and/or records within 10 business days of service of such request, consistent with applicable laws and this Part.

§ 226.6 Consumer Credit Reporting Agency Filing.
Each consumer credit reporting agency operating within the State shall file with the Department such information as the Division finds necessary to effectively administer the Program. Such information shall be disclosed by filing a form provided by the Department and entitled “Consumer Reporting Agency Notice and Contact Information.” Such form shall include, but not be limited to, the following information, which shall be maintained and updated by the filer in the manner prescribed by the Department:

(a) The name of the consumer credit reporting agency.

(b) The principles and officers of the consumer credit reporting agency.

(c) The direct contact information for an individual(s) within the consumer credit reporting agency available to the Division during regular business hours.

(d) The direct contact information for an individual(s) within the consumer credit reporting agency available to the Division within 24 hours of a notification of a security breach pursuant to GBL § 399-aa(8)(a).

(e) Contact information available to consumers, including, the consumer credit reporting agency’s web address, telephone number and email address.

(f) A listing of all proprietary products offered by the consumer credit reporting agency to consumers for the prevention or mitigation of identity theft, any and all fees associated with the purchase of or subscription to such products, and the contractual provisions and disclosures in relation to such purchase or subscription, including, but not limited to: scope of services; liability for negligent or erroneous provision of services; and cancellation requisites.

(g) A listing and description of all business affiliations and contractual relationships with any other entities, where such business affiliations or contractual relationships relate to the provision of any products or services advertised to consumers as products or services available for the prevention or mitigation of identity theft.

(h) The consumer credit reporting agency’s DUNNS number.

§ 226.7 Consumer Information.
Any advertisements or other material promoting proprietary products offered to consumers by a consumer credit reporting agency for the prevention of identity theft must prominently disclose any and all fees associated with the purchase or use of such product, including, if offered on a trial basis, any and all fees charged for its purchase or use after the trial period and the requisites of cancellation of such continued use.

§ 226.8 Violations.
A violation of any of the rules set forth in this Part shall be referred to the Attorney General, Department of Financial Services and/or any other appropriate law enforcement or regulatory entity for action.

This notice is intended to serve 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. DOS-52-17-00013-EP, Issue of December 27, 2017. The emergency rule will expire May 7, 2018.

Text of rule and any required statements and analyses may be obtained from: David Mossberg, NYS Department of State, Office of Counsel, One Commerce Plaza, Albany, NY 12231, (518) 474-6740, email: david.mossberg@dos.ny.gov

Regulatory Impact Statement

1. Statutory authority:
New York Executive Law § 91 authorizes the Secretary of State to: “adopt and promulgate such rules which shall regulate and control the exercise of the powers of the department of state.” Additional authority is set forth in Executive Law § 94(6), which authorizes the Secretary to “implement other powers and duties by regulation,” and Executive Law § 94(9)(j) which authorizes the Secretary of State to “promulgate rules and regulations to administer the identity theft prevention and mitigation program.”

2. Legislative objectives:
Chapter 62 of the Laws of 2011 consolidated the Consumer Protection Board within the Department of State as a division under the supervision of the Secretary of State. The Division of the Executive Law provides the Division of Consumer Protection with general authority to act in the interests of consumers “in order to protect the people of New York state
from economic harm. The Division has long been concerned with the psychologically destructive and economically catastrophic effects of identity theft. It has engaged in public education and outreach, represented the interests of identity theft victims and acted as liaison between them and other entities, both governmental and private. These rules would augment substantial efforts by establishing an “Identity Theft Prevention and Mitigation Program (Program).” Among other things, the Program sets forth complaint procedures for consumers and provides for the timely flow of information and assistance critical to consumers exposed to identity theft.

In order to steal an individual’s identity, the criminal must acquire the victim’s personal information. Of great value is the victim’s financial information and credit history, which provides the criminal with a roadmap for the looting of the victim’s wealth. Such information is aggregated, maintained and analyzed by Consumer Credit Reporting Agencies (CCRAs), which provide “consumer credit reports” to entities doing business with consumers. Consumers seeking to obtain such things as mortgages, apartment rentals, and loans must consent to such “credit check” or go without. It is critical to the economic health of all that such information be maintained in the strictest confidence and used only for its intended purpose. Unfortunately, recent events have shown that such is not the case. The massive data breach experienced by Equifax, a large CRA, has exposed millions of New Yorkers to fraud and economic ruin. The “theft” of these individual’s identities begins with such breach. Equifax (and other such entities experiencing data breaches) is under an obligation to consumers to provide timely information concerning the status of their credit histories, what is being done to protect them and how they can protect themselves. These rules include mechanisms to facilitate the provision of such information and assistance by: 1) clarifying the status of a “victim of identity theft” as inclusive of an individual who has been victimized by a security breach; 2) requiring, among other things, the filing of a form with the Division that CCRAs establish and notify the Division of a point of contact for Division inquiry and fact finding, and for such point of contact to be available for such dialogue for general matters during regular business hours and within 24 hours in event of a notification of a security breach; and 3) the disclosure to the Division and consumers of proprietary and other products offered by the CRA to consumers for the prevention of identity theft, with information as to the fees and contractual provisions associated therewith. Such information will better enable consumers to make informed choices as to what credit monitoring or protection product is suitable for them.

The Secretary of State, empowered to issue these regulations to safeguard the interests of consumers and the public, generally, finds that the ready availability of information and assistance to victims of identity theft and security breaches is critical to their efforts to avoid the potentially devastating consequences of identity theft.

3. Needs and benefits:

The rulemaking, establishing the Identity Theft Prevention and Mitigation Program, facilitates the timely provision of information and assistance to Consumer Credit Reporting Agencies to victims of identity theft and security breaches and the Division of Consumer Protection. The timely provision of such information and assistance will better enable individuals to protect themselves from fraud and financial devastation.

4. Costs:

a. Costs to regulated parties:
The cost to CCRAs to comply with this rule will be nominal.
b. Costs to the Department of State, the State, and Local Governments:
The Department does not anticipate any additional costs to implement the rule.

5. Local government mandates:
The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:
The rule requires CCRAs to file a form with the Division. It is anticipated that such form will be short and will not require significant resources to complete.

7. Duplication:
The Department currently educates and assists the public with regard to identity theft and mediates on behalf of victims of identity theft. However, the Division has found that the timely provision of necessary information and assistance to such victims is of critical importance to their efforts to protect themselves from, or mitigate the impacts of, the theft. These rules facilitate such timely provision.

8. Alternatives:
The Department considered not proposing the instant rulemaking. However, this rule is needed to provide a clear path for consumers to acquire information and assistance necessary in the wake of a security breach and to better enable the Division to provide support to victims of identity theft.

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:

Immediate upon adoption.

Regulatory Flexibility Analysis

The rule imposes neither an adverse economic impact on small businesses or local governments; nor reporting, recordkeeping or other compliance requirement on small businesses or local governments.

The massive data breach experienced by Equifax, a large CRA, has exposed millions of New Yorkers to fraud and economic ruin. The “theft” of these individual’s identities begins with such breach. Equifax (and other such entities experiencing data breaches) is under an obligation to consumers to provide timely information concerning the status of their credit histories, what is being done to protect them and how they can protect themselves. This rules includes mechanisms to facilitate the provision of such information and assistance.

Comments will be received and entertained during the public comment period associated with the Proposed Rulemaking.

Rural Area Flexibility Analysis

This rule imposes neither an adverse impact on rural areas; nor reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

The rule will apply to Consumer Credit Reporting Agencies (CCRAs) which provide services across the state, but are not primarily located in rural areas. This rule requires among other things, that: CCRAs establish and notify the Division of a point of contact for Division inquiry and fact finding, such point of contact be available for such dialogue for general matters during regular business hours and within 24 hours in event of a notification of a security breach, and disclosure be provided to the Division and consumers of proprietary products offered by the CRA to consumers for the prevention of identity theft, with information as to the fees and contractual provisions associated therewith. It is anticipated that the costs associated with such requirements will be insubstantial.

Comments will be received and entertained during the public comment period associated with the Proposed Rulemaking.

Job Impact Statement

It is apparent from the nature and purposes of this rule that it will not have a substantial adverse impact on jobs or employment opportunities. This rule will primarily apply to three large CRA, which provide services across the state, but are not primarily located in rural areas. This rule requires among other things, that: CRA establish and notify the Division of a point of contact for Division inquiry and fact finding, such point of contact be available for such dialogue for general matters during regular business hours and within 24 hours in event of a notification of a security breach, and disclosure be provided to the Division and consumers of proprietary products offered by the CRA to consumers for the prevention of identity theft, with information as to the fees and contractual provisions associated therewith. It is anticipated that such requirements would have little to no impact on jobs.

Comments will be received and entertained during the public comment period associated with the Proposed Rulemaking.