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**NEW YORK STATE**

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**REGISTER**

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***INSIDE THIS ISSUE:***

- Implement Statutory Requirements to Include Enhanced Background Checks, Annual Inspections, Annual Training and Safety
- Use of Force
- Annual Professional Performance Reviews of Classroom Teachers and Building Principals

**Rule Review  
Executive Orders**

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State agencies must specify in each notice which proposes a rule the last date on which they will accept public comment. Agencies must always accept public comment: for a minimum of 60 days following publication in the *Register* of a Notice of Proposed Rule Making, or a Notice of Emergency Adoption and Proposed Rule Making; and for 45 days after publication of a Notice of Revised Rule Making, or a Notice of Emergency Adoption and Revised Rule Making in the *Register*. When a public hearing is required by statute, the hearing cannot be held until 60 days after publication of the notice, and comments must be accepted for at least 5 days after the last required hearing. When the public comment period ends on a Saturday, Sunday or legal holiday, agencies must accept comment through the close of business on the next succeeding workday.

***For notices published in this issue:***

- the 60-day period expires on February 22, 2020
- the 45-day period expires on February 7, 2020
- the 30-day period expires on January 23, 2020

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# NEW YORK STATE REGISTER

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## Be a part of the rule making process!

The public is encouraged to comment on any of the proposed rules appearing in this issue. Comments must be made in writing and must be submitted to the agency that is proposing the rule. Address your comments to the agency representative whose name and address are printed in the notice of rule making. No special form is required; a handwritten letter will do. Individuals who access the online *Register* ([www.dos.ny.gov](http://www.dos.ny.gov)) may send public comment via electronic mail to those recipients who provide an e-mail address in Notices of Proposed Rule Making. This includes Proposed, Emergency Proposed, Revised Proposed and Emergency Revised Proposed rule makings.

To be considered, comments should reach the agency before expiration of the public comment period. The law provides for a minimum 60-day public comment period after publication in the *Register* of every Notice of Proposed Rule Making, and a 45-day public comment period for every Notice of Revised Rule Making. If a public hearing is required by statute, public comments are accepted for at least five days after the last such hearing. Agencies are also required to specify in each notice the last date on which they will accept public comment.

When a time frame calculation ends on a Saturday or Sunday, the agency accepts public comment through the following Monday; when calculation ends on a holiday, public comment will be accepted through the following workday. Agencies cannot take action to adopt until the day after expiration of the public comment period.

The Administrative Regulations Review Commission (ARRC) reviews newly proposed regulations to examine issues of compliance with legislative intent, impact on the economy, and impact on affected parties. In addition to sending comments or recommendations to the agency, please do not hesitate to transmit your views to ARRC:

Administrative Regulations Review Commission  
State Capitol  
Albany, NY 12247  
Telephone: (518) 455-5091 or 455-2731

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KEY: (P) Proposal; (RP) Revised Proposal; (E) Emergency; (EP) Emergency and Proposal; (A) Adoption; (AA) Amended Adoption; (W) Withdrawal

Individuals may send public comment via electronic mail to those recipients who provided an e-mail address in Notices of Proposed Rule Making. This includes Proposed, Emergency Proposed, Revised Proposed and Emergency Revised Proposed rule makings. Choose pertinent issue of the *Register* and follow the procedures on the website ([www.dos.ny.gov](http://www.dos.ny.gov))

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# RULE MAKING ACTIVITIES

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

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

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

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## Office of Children and Family Services

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### EMERGENCY RULE MAKING

#### Implement Statutory Requirements to Include Enhanced Background Checks, Annual Inspections, Annual Training and Safety

**I.D. No.** CFS-39-19-00005-E

**Filing No.** 1126

**Filing Date:** 2019-12-09

**Effective Date:** 2019-12-09

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

**Action taken:** Amendment of Parts 413, 414, 416, 417, Subparts 418-1 and 418-2 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f), 390(2)(d) and (2-a)

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

**Specific reasons underlying the finding of necessity:** This rule is in response to the changes required by the reauthorization of the Child Care and Development Block Grant Act, federal Child Care and Development Fund regulatory changes, and recent statute statutory changes to the Social Services Law. This emergency is necessary to implement changes effective starting September 25, 2019 and achieve compliance with federal background clearances, training, inspection, and health and safety standards. To do so this emergency rule changes Title 18 of the Official

Compilation of Codes, Rules and Regulations of the State of New York Parts 413, 414, 416 and 417, and Subparts 418-1 and 418-2.

**Subject:** Implement statutory requirements to include enhanced background checks, annual inspections, annual training and safety.

**Purpose:** Implement statutory requirements to include enhanced background checks, annual inspections, annual training and safety.

**Substance of emergency rule (Full text is posted at the following State website: <https://ocfs.ny.gov/main/legal/Regulatory/er/>):** This rule is necessary to implement statutory requirements pursuant to the federal Child Care and Development Block Grant Act (CCDBG) of 2014 and associated changes to the New York Social Services Law (SSL). This rule amends Title 18 of the New York State Codes, Rules and Regulations (NYCRR) Parts 413, 414, 416, and 417 and Subparts 418-1 and 418-2 so to require enhanced background checks, annual inspections, annual training, enhanced health and safety requirements in specified areas and other necessary changes.

**Enhanced Background Clearances:** All prospective and existing operators, employees, volunteers, and household members age 18 or older must complete enhanced criminal background checks. Individuals who are found to have been convicted of mandatory disqualifying offenses will be prohibited from having a role in any child care program. This rule will increase the safety of children in care.

**Training:** Every staff person and volunteer is required to obtain a minimum of five hours of training annually addressing topics or subject matters required by state and federal law. Prorating the number of training hours is no longer permitted.

**Health and Safety Requirements:** This rule adds health and safety mandates in accordance with the federal requirements including prevention of scalding, supervision of sleeping children, prohibition of certain passenger vans and other such health and safety requirements as included below.

**Prevention of Scalding:** All child care programs are required to take suitable precautions to prevent burns by contact with hot liquids.

**Supervision of Sleeping Children:** The Office has clarified the requirement for family day care, group family day care, and day care centers with regard to supervising sleeping children. The caregiver is required to conduct a check every 15 minutes to assess the overall safety and well-being of the children, and to make sure infant's heads are uncovered.

**Prohibition of Certain Passenger Vans:** The Office is prohibiting all child care programs from transporting children in a vehicle built to hold more than 10 passengers, including the driver, unless the vehicle: 1) meets the National Highway Traffic Safety Administration definition of a school bus or a multifunction school activity bus, 2) complies with the National Highway Traffic Safety Administration Federal Motor Vehicle Safety Standards applicable to a school bus or multifunction school activity bus, and 3) is inspected per New York State Department of Transportation rules and regulations.

**Safety Plans:** The Office conducts collateral investigations with local child protective services (CPS) agencies. In some instances, the allegations, if true, would be reason to suspend and/or revoke the license or registration of the program. The Office will be requiring all child day care programs follow a safety plan developed by the Office during the investigation.

**Identifying Unlicensed/Unregistered Programs:** The Office may request attestations from parents describing the relationship of their children to the provider when investigating whether an unlicensed, unregistered program is operating a program for which a license or registration is required.

**Back to Sleep:** Revisions are being made to comply with the American Academy of Pediatrics recommendation of putting babies on their backs to sleep throughout the first year of life, rather than until the age of 18 months. The Office will no longer allow the use of blankets and stuffed animals in cribs with infants under 12 months of age and will require use of an appropriately sized fitted sheet.

**Nutritional Content for School-Age Meal and Snack Plans:** School-age

child care (SACC) programs are required, as part of the regulations and the state's obesity prevention initiative, to operate in compliance with the federal Child and Adult Care Food Program (CACFP) meal patterns. SACC programs will now have their menus reviewed for nutritional content, variety and quality at the time of initial application, and once every 24 months by CACFP specialist responsible for reviewing and approving menus, or by a person who has a bachelor's or master's degree with a major in food and institutional management or a closely related field and who has completed a dietician internship, or has been certified as a registered dietician or has an equivalent state certification.

**Health Care Consultant:** Day care centers that care for infants, toddlers, or moderately ill children will need to have a health care consultant to review its health care plan and practices.

**Special Health Care Needs:** The Office is requiring that all staff working and substituting in classrooms that have children with special health care needs know those children's individual needs and how to obtain appropriate assistance. If these special needs include allergies, a message to this effect is to be posted in a discreet location as a reminder to staff.

**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. CFS-39-19-00005-EP, Issue of September 25, 2019. The emergency rule will expire February 6, 2020.

**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, NY 12144, (518) 486-9563, email: leslie.robinson@ocfs.ny.gov

#### **Regulatory Impact Statement**

##### **1. Statutory Authority:**

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the New York State Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 390(2)(d) of the SSL authorizes the Office to establish regulations for the licensure and registration of child day care providers.

Section 390(2-a) of the SSL requires the Office to establish minimum quality program requirements for child day care.

##### **2. Legislative Objectives:**

The proposed changes the child day care regulations are necessary to implement statutory authority granted to the Office on April 1, 2019. SSL 390 was amended pursuant to the Child Care and Development Block Grant Act (CCDBG) of 2014. These legislative provisions require enhanced background checks, annual inspections, training mandates for child care providers and additional health and safety standards. The proposed changes will significantly improve the safety of children in child care programs, and bring the Office into compliance with federal and state legislative requirements.

##### **3. Needs and Benefits:**

As referenced above in sections 1 and 2, the federal and state legislative changes mandate these regulatory changes. These legislative provisions require enhanced background checks, annual inspections, training mandates for child care providers and additional health and safety standards. The proposed changes will significantly improve the safety of children in child care programs, and bring the Office into compliance with federal and state legislative requirements.

##### **4. Costs:**

The costs associated with the proposed changes in the child day care regulations that are necessary to implement new statutory authority pursuant to the Child Care and Development Block Grant Act (CCDBG) of 2014 are significant, but are anticipated to be mostly assumed by the Office. New requirements around enhanced background checks, annual inspections, and additional annual training of licensed and registered providers have been estimated to cost approximately \$37 million. At this time, the Office is not intending to pass these costs on to regulated providers. The fiscal burden on providers is anticipated to fall primarily on time lost from providing care in order to comply with the enhanced background checks and additional training requirements. Child care programs that currently allow prospective staff undergoing background checks to provide child care services to children, while under the supervision of another staff person, will incur additional costs, as prospective staff undergoing the background check process will no longer be permitted at the child care program until the background check is completed and the person is found eligible to be present at the program. The Office does not have data available to estimate the number of programs that will be impacted by this change. As a result of the proposed regulations, day care centers that care for infants, toddlers or moderately ill children will be required to use the services of a health care consultant in completing a health care plan. Approximately 70 percent of day care centers already collaborate with health care consultants and will be unaffected by this

change. For the remaining 30 percent of day care centers, the Office has contracted with Child Care Resource and Referral (CCR&R) agencies to employ registered nurses who act as health care consultants to child care programs at a reduced fee.

School-age programs are required, as part of the regulations and the state's obesity prevention initiative, to operate in compliance with the federal Child and Adult Care Food Program (CACFP) meal patterns. The Office proposes that programs have their menus reviewed for nutritional content, variety and quality at the time of initial application and once every 24 months by a CACFP specialist responsible for reviewing and approving menus or by a person who has a bachelor's or master's degree with a major in food and institutional management or a closely related field and who has completed a dietician internship or has been certified as a registered dietician or has an equivalent state certification. A school-age program that is enrolled in CACFP has their menu approved at no cost. CACFP also offers this service to non-enrolled programs at no charge. Some county cooperative extension programs also offer this service free of charge.

Other changes, primarily the changes related to increasing the Office's ability to identify illegally operating day care programs is expected to have a positive financial impact on regulated providers by increasing the supply of children and families who will utilize regulated programs, thereby generating increased revenue to these programs. Also, some administrative relief is provided to regulated programs as a result of these new regulations.

##### **5. Local Government Mandates:**

No new mandates are imposed on local governments by these proposed regulations.

##### **6. Paperwork:**

There is an increase in paperwork associated with the proposed changes in background checks. All prospective and existing operators, employees, volunteers and adult household members will be required to complete the clearance packet. Rescreening will be conducted no less than once every five years. Programs will be required to discreetly post child-specific allergy information. The proposed regulations will require that school-age programs have a nutrition professional approve school age program menus. Paperwork will be reduced, however, by eliminating the family day care health and safety check list and requiring fewer employment references.

##### **7. Duplication:**

The new requirements do not duplicate state or federal requirements.

##### **8. Alternatives:**

There are no alternatives.

##### **9. Federal Standards:**

The regulations are consistent with applicable federal requirements.

##### **10. Compliance Schedule:**

The proposed regulations will become effective September 25, 2019.

#### **Regulatory Flexibility Analysis**

##### **1. Effect on Small Businesses and Local Governments:**

There are 16,566 small day care businesses in New York State that are comprised of day care centers, school age child care programs, family and group family day care homes, and one small day care center. All of these programs will be affected by the regulatory changes proposed. Local government agencies will not be affected by the changes in these proposed regulations.

##### **2. Compliance Requirements:**

This rule implements statutory requirements pursuant to the federal Child Care and Development Block Grant Act (CCDBG) of 2014 and associated changes to the New York Social Services Law (SSL). This rule amends Title 18 of the New York State Codes, Rules and Regulations (NYCRR) Parts 413, 414, 416, and 417 and Subparts 418-1 and 418-2 so to require enhanced background checks, annual inspections, annual training, enhanced health and safety requirements in specified areas and other necessary changes.

##### **3. Professional Services:**

As a result of the proposed regulations, day care centers that care for infants, toddlers or moderately ill children will be required to use the services of a health care consultant in completing a health care plan.

School-age child care programs will need to have their menus reviewed for nutritional content, variety and quality at the time of initial application and once every 24 months by a designated nutrition specialist.

Family-based child care programs and small day care centers will not be required to use or employ any additional professional services as a result of these proposed changes.

##### **4. Compliance Costs:**

The costs associated with the proposed changes in the child day care regulations that are necessary to implement new statutory authority pursuant to the Child Care and Development Block Grant Act (CCDBG) of 2014 are significant, but are anticipated to be mostly assumed by the Office. New requirements around enhanced background checks, annual

inspections, and additional annual training of licensed and registered providers have been estimated to cost approximately \$37 million. At this time, the Office is not intending to pass these costs on to regulated providers. The fiscal burden on providers is anticipated to fall primarily on time lost from providing care in order to comply with the enhanced background checks and additional training requirements. Child care programs that currently allow staff not employed by the child care program to provide services to children with disabilities at the program will incur additional costs, as these individuals will not be left unsupervised with a day care child. Programs will incur the costs associated with having fully cleared staff available to supervise service providers so that services to children are not interrupted. The Office does not have data available to estimate the number of programs that will be impacted by this change. As a result of the proposed regulations, day care centers that care for infants, toddlers or moderately ill children will be required to use the services of a health care consultant in completing a health care plan. Approximately 70 percent of day care centers already collaborate with health care consultants and will be unaffected by this change. For the remaining 30 percent of day care centers, the Office has contracted with Child Care Resource and Referral (CCR&R) agencies to employ registered nurses who act as health care consultants to child care programs at a reduced fee.

School-age programs are required, as part of the regulations and the State's obesity prevention initiative, to operate in compliance with the federal Child and Adult Care Food Program (CACFP) meal patterns. The Office proposes that programs have their menus reviewed for nutritional content, variety and quality at the time of initial application and once every 24 months by a CACFP specialist responsible for reviewing and approving menus or by a person who has a bachelor's or master's degree with a major in food and institutional management or a closely related field and who has completed a dietician internship or has been certified as a registered dietician or has an equivalent state certification. A school-age program that is enrolled in CACFP has their menu approved at no cost. CACFP also offers this service to non-enrolled programs at no charge. Some county cooperative extension programs also offer this service free of charge.

Other changes, primarily the changes related to increasing the Office's ability to identify illegally operating day care programs is expected to have a positive financial impact on regulated providers by increasing the supply of children and families who will utilize regulated programs, thereby generating increased revenue to these programs. Also, some administrative relief is provided to regulated programs as a result of these new regulations.

5. Economic and Technological Feasibility:

There are no technological impacts on child day care programs.

6. Minimizing Adverse Impact:

The Office believes there will be minimal adverse impact on child care programs.

7. Small Business and Local Government Participation:

In the development of the proposed child day care regulations, the Office considered the remarks of and the input from both unions that represent family-based providers. Those unions are the Civil Service Employees Association (CSEA) and the United Federation of Teachers (UFT). The Office has also led discussions and received comment on regulations at professional conferences and forums.

**Rural Area Flexibility Analysis**

1. Types and Estimated Numbers of Rural Areas:

The proposed regulations will apply to all modalities of child care programs operating in 44 rural areas of the state.

2. Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

The changes to the child day care regulations are necessary to implement new statutory requirements pursuant to the federal Child Care and Development Block Grant Act (CCDBG) of 2014 and corresponding changes to the New York Social Services Law (SSL). This legislation requires enhanced background checks, annual inspections, annual training, and additional enhanced health and safety requirements in specific areas.

There is an increase in paperwork associated with the proposed changes in background checks. All prospective and existing operators, employees, volunteers and adult household members will be required to complete the clearance packet. Rescreening will occur no less than once every five years. Programs will be required to discreetly post child-specific allergy information. The proposed regulations will require that school-age programs have a nutrition professional approve school age program menus. Paperwork will be reduced, however, by eliminating the family day care health and safety checklist at renewal, and requiring fewer employment references.

As a result of the proposed regulations, day care centers that care for infants, toddlers, or moderately ill children will be required to use the services of a health care consultant in completing a health care plan. School-

age programs will need to have their menus reviewed for nutritional content, variety and quality at the time of initial application and once every 24 months by a designated nutrition specialist.

3. Costs:

The costs associated with the proposed changes in the child day care regulations that are necessary to implement new statutory authority pursuant to the Child Care and Development Block Grant Act (CCDBG) of 2014 are significant, but are anticipated to be mostly assumed by the Office. New requirements around enhanced background checks, annual inspections, and additional annual training of licensed and registered providers have been estimated to cost approximately \$37 million. At this time, the Office is not intending to pass these costs on to regulated providers. The fiscal burden on providers is anticipated to fall primarily on time lost from providing care in order to comply with the enhanced background checks and additional training requirements. Child care programs that currently allow staff not employed by the child care program to provide services to children with disabilities at the program will incur additional costs, as such individuals will not be left unsupervised with a day care child. Programs will incur the costs associated with having fully cleared staff available to supervise service providers so that services to children are not interrupted. The Office does not have data available to estimate the number of programs that will be impacted by this change. As a result of the proposed regulations, day care centers that care for infants, toddlers or moderately ill children will be required to use the services of a health care consultant in completing a health care plan. Approximately 70 percent of day care centers already collaborate with health care consultants and will be unaffected by this change. For the remaining 30 percent of day care centers, the Office has contracted with Child Care Resource and Referral (CCR&R) agencies to employ registered nurses who act as health care consultants to child care programs at a reduced fee.

School-age programs are required, as part of the regulations and the state's obesity prevention initiative, to operate in compliance with the federal Child and Adult Care Food Program (CACFP) meal patterns. The Office proposes that programs have their menus reviewed for nutritional content, variety and quality at the time of initial application, and once every 24 months by a CACFP specialist responsible for reviewing and approving menus, or by a person who has a bachelor's or master's degree with a major in food and institutional management or a closely related field and who has completed a dietician internship or has been certified as a registered dietician, or has an equivalent state certification. A school-age program that is enrolled in CACFP has their menu approved at no cost. CACFP also offers this service to non-enrolled programs at no charge. Some county cooperative extension programs also offer this service free of charge.

Other changes, primarily the changes related to increasing the Office's ability to identify illegally operating day care programs is expected to have a positive financial impact on regulated providers by increasing the supply of children and families who will utilize regulated programs, thereby generating increased revenue to these programs. Also, some administrative relief is provided to regulated programs as a result of these new regulations.

4. Minimizing Adverse Impact:

The Office does not anticipate any adverse impact to rural area child care programs as a result of the proposed regulations.

5. Rural Area Participation:

The Office received comment from child day care directors, providers and owners during forums and conferences held in the past. The Civil Service Employees Association (CSEA) and the United Federation of Teachers (UFT) provided feedback and comment in the development of the proposed regulations.

**Job Impact Statement**

1. Nature of Impact

The proposed regulations could impact jobs or employment opportunities for child day care program employees or caregivers in all regions of New York State. The provisions set forth require enhanced background clearances, the results of which could impact the employment of previous screened and approved child care employees due to mandatory disqualifying offenses.

2. Categories and Numbers Affected

It is anticipated that there are 220,000 current employees and household members needing to be rescreened.

3. Regions of Adverse Impact

Potential impact would be across all regions.

4. Minimizing Adverse Impact

For non-mandatory disqualifying offenses, the Office is implementing a fair hearing process for anyone denied a role.

**EMERGENCY  
RULE MAKING**

**Implement Statutory Requirements to Include Enhanced Background Checks, Annual Inspections, Annual Training and Safety**

**I.D. No.** CFS-39-19-00007-E

**Filing No.** 1125

**Filing Date:** 2019-12-09

**Effective Date:** 2019-12-09

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

**Action taken:** Amendment of Subpart 358-3, Parts 403, 404, 405, 406 and 415 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f), 390(2)(d), 410(1) and 410-x

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

**Specific reasons underlying the finding of necessity:** This rule is in response to the changes required by the reauthorization of the Child Care and Development Block Grant Act, federal Child Care and Development Fund regulatory changes, and recent statute statutory changes to the Social Services Law. This emergency is necessary to implement changes effective starting September 25, 2019 and achieve compliance with federal background clearances, training, inspection, and health and safety standards. To do so this emergency rule changes Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York Subpart 358-3 and Parts 403, 404, 405, 406 and 415.

**Subject:** Implement statutory requirements to include enhanced background checks, annual inspections, annual training and safety.

**Purpose:** Implement statutory requirements to include enhanced background checks, annual inspections, annual training and safety.

**Substance of emergency rule (Full text is posted at the following State website: <https://ocfs.ny.gov/main/legal/Regulatory/er/>):** This rule is necessary to implement statutory requirements pursuant to the federal Child Care and Development Block Grant Act (CCDBG) of 2014 and associated changes to the New York Social Services Law (SSL). This rule amends Title 18 of the New York State Codes, Rules and Regulations (NYCRR) Subpart 358-3 and Parts 403, 404, 405, 406 and 415 so to require enhanced background checks, annual inspections, annual training, removal of the family share for youth in foster care, enhanced health and safety requirements in specified areas and other necessary changes.

**Enhanced Background Clearances:** This rule will increase the safety of children in care. All legally-exempt child care providers, except relative-only providers, and all employees, volunteers, and family child care household members age 18 or older must complete criminal history review and background clearances. An individual found to have been convicted of a mandatory disqualifying offense or who engages in certain uncooperative behaviors associated with the background check process is ineligible to be a provider, director, employee or volunteer at a child care program. Additionally, applicant to become a legally-exempt child care provider subject to the background check requirements cannot be enrolled by an enrollment agency when a family child care household member age 18 or older, who is not related in any way to all children in care, engaged in such conduct.

**Training:** This rule increases training requirements to be in accordance with the federal requirements. In addition to the pre-service health and safety training, all legally-exempt child care providers, unless exempted by statute, and all employees and volunteers are required to obtain a minimum of five hours of training annually addressing topics or subject matters required by state and federal law.

**Inspections:** This rule increases the number of inspections required to be conducted by enrollment agencies annually. Enrollment agencies must conduct annual, on-site inspections, of all currently enrolled legally-exempt child care providers, unless otherwise exempted by statute.

**Immunization/medical Records:** This rule replaces the current emergency rule regarding non-medical vaccinations to make the language consistent with other provisions in this package.

**Family Share:** This rule removes the family share requirement for a child in foster care in receipt of child care assistance.

**Health and Safety Requirements:** This rule adds health and safety mandates in accordance with the federal requirements including transportation, supervision of sleeping children, child abuse and maltreatment reporting, among others. Legally-exempt group child care programs that

are operating under the auspices of another agency are required to submit a health and safety checklist to the enrollment agency as part of the enrollment application, and to comply with all such health and safety requirements.

**Supervision of sleeping children:** This rule requires legally-exempt family and in-home child care providers to have a written agreement with parents that addresses sleeping and napping arrangements.

**Back to sleep:** This rule requires legally-exempt child care providers to put children on their backs to sleep throughout the first year of life.

**Emergency Plan:** This rule requires all legally-exempt child care providers to have a written emergency plan for the safe and timely evacuation of children.

**Allergy Information:** This rule requires all legally-exempt group child care programs to discreetly post child-specific food allergy information.

**Certificate of Occupancy:** This rule requires legally-exempt group child care programs to submit a certificate of occupancy or equivalent documentation showing the facility has been approved for use as a child care program to the enrollment agency prior to enrollment.

**Child Abuse and Maltreatment:** This rule requires legally-exempt providers, employees and volunteers, who are not related to all children in care by federal definition, to submit to a background check of the Statewide Central Register of Child Abuse and Maltreatment (SCR). Additionally, legally-exempt providers, directors, employees and volunteers must make a report to the SCR when there is reasonable cause to suspect abuse to maltreatment of a child in care.

**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. CFS-39-19-00007-EP, Issue of September 25, 2019. The emergency rule will expire February 6, 2020.

**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, NY 12144, (518) 486-9563, email: [leslie.robinson@ocfs.ny.gov](mailto:leslie.robinson@ocfs.ny.gov)

**Regulatory Impact Statement**

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (OCFS) to establish rules, regulations and policies to carry out OCFS's powers and duties under the SSL.

Section 34(3)(f) of the SSL authorizes OCFS to establish regulations for the administration of public assistance and care within the State.

Section 390(2)(d-1) of the SSL, effective September 1, 2019, authorizes OCFS to establish regulations for legally-exempt child care providers to be able to receive child care subsidy funds.

Section 410(1) of the SSL authorizes a social services official of a county, city, or town to provide day care for children at public expense and authorizes OCFS to establish criteria for when such day care is to be provided.

Section 410-x(3) of the SSL requires OCFS to establish in regulation minimum health and safety standards that must be met by child care providers, funded under the New York State Child Care Block Grant.

2. Legislative objectives:

The proposed changes to Title 18, of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are necessary to implement statutory authority granted to OCFS on April 1, 2019. SSL 390 was amended pursuant to the Child Care and Development Block Grant Act (CCDBG) of 2014. These legislative provisions require enhanced background checks and annual inspections of certain legally-exempt child care providers. The proposed changes will significantly improve the safety of children in child care programs and bring the Office into compliance with federal and state legislative requirements.

3. Needs and benefits:

As referenced above in sections 1 and 2, the federal and state legislative changes mandate these regulatory changes. This rule is needed for compliance with federal law, including, but not limited to, enhanced background checks, annual inspections, annual training, removal of the family share for youth in foster care and enhancing health and safety standards that will help protect children in care. This rule adds health and safety mandates in accordance with the federal requirements including transportation, supervision of sleeping children, child abuse and maltreatment reporting, among others. The proposed changes will significantly improve the safety of children in child care programs and bring the Office into compliance with federal and state legislative requirements. The elimination of the family share for child care services for a child in foster care will reduce barriers for such children to be enrolled expeditiously in a child care program.

4. Costs:

The costs associated with this rule are necessary to implement require-

ments under the Child Care and Development Block Grant Act (CCDBG) of 2014. While such costs are significant, they are largely born by OCFS. New requirements around enhanced background checks, annual inspections, and additional annual training of legally-exempt child care providers have been estimated to cost approximately \$43 million. At this time, OCFS does not intend to pass the costs related to inspections, training or criminal background checks on to providers, except for the \$25 processing fee for conducting a check of the Statewide Central Registry of Child Abuse and Maltreatment. Compliance with the enhanced background checks and additional training requirements is anticipated to be the primary fiscal burden for child care providers due to time lost from providing care. However, the Office offers a variety of training courses, at no cost to child care programs, that would satisfy the proposed annual training requirement for providers of legally-exempt child care. For those providers that use the Office training courses to satisfy this requirement, the costs will be minimal.

5. Local government mandates:

This rule imposes no new mandates on local governments. However, local social services districts will need to replace current forms that they distribute to child care assistance applicants with revised forms that will be provided by OCFS. The regulations will alleviate some districts from imposing certain additional standards on individuals applying to be an enrolled legally-exempt child care provider. For example, some districts require a background check and/or an annual inspection in order for a program to provide subsidized child care services. These regulations will impose such standard on a consistent basis at the state level for legally-exempt child care programs seeking to provide subsidized child care services.

6. Paperwork:

This rule results in an increase in paperwork due to the required changes in background checks. Prospective and existing providers, employees, volunteers and adult family child care household members, unless specifically exempted, are required to complete the background check packet. Federal law requires rescreening through the background check process no less than once every five years. Additional documentation on health and safety compliance is also required.

7. Duplication:

This rule does not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives:

There are no alternatives to this rule. Federal and State law require compliance in September 2019.

9. Federal standards:

This rule is consistent with applicable federal requirements to conduct background checks and, annual inspections, enhance of health and safety standards, and impose annual training standards for child care programs.

10. Compliance schedule:

This rule becomes effective September 25, 2019.

### Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:

This rule affects all local social services districts, legally-exempt caregiver enrollment agencies, and providers of legally-exempt child care across New York State.

2. Compliance requirements:

Enhanced background checks require prospective and existing legally-exempt child care providers, employees, volunteers and adult family child care household members, unless specifically exempted by statute, to complete and submit clearance paperwork. These clearances need to be repeated no less than once every five years.

All legally-exempt child care providers, employees and volunteers, unless specifically exempted by statute, are required to obtain a minimum of five hours of training annually addressing required topics.

All legally-exempt child care providers except for relative-only providers are required to be inspected on an annual basis in order to maintain their enrollment to receive child care subsidy funds.

All legally-exempt child care providers are required to have a written emergency plan for the safe and timely evacuation of children.

All legally-exempt group child care programs are required to complete and comply with an expanded health and safety checklist and submit compliance related documentation.

Local social services districts will need to replace current forms that they distribute to child care assistance applicants with revised forms that will be provided by OCFS. The regulations will alleviate some districts from imposing certain additional standards on individuals applying to be an enrolled legally-exempt child care provider. For example, some districts require a background check and/or an annual inspection in order for a program to provide subsidized child care services. These regulations will impose such standards on a consistent basis at the state level for legally-exempt child care programs seeking to provide subsidized child care services.

Enrollment agencies will be responsible for processing enrollment applications, including relevant portions of the background checks process, inspecting child care programs for compliance with regulatory requirements, including the enhanced health and safety standards and verification of the annual training requirements.

3. Professional services:

This rule imposes no requirements for professional services upon small businesses or local governments.

4. Compliance costs:

The costs associated with the proposed changes in the child care regulations that are necessary to implement statutory authority pursuant to the Child Care and Development Block Grant Act (CCDBG) of 2014 are significant but are largely born by OCFS. New requirements around enhanced background checks, annual inspections, and additional annual training of legally-exempt child care providers have been estimated to cost approximately \$43 million. At this time, OCFS does not intend to pass the costs related to inspections, training or criminal background checks on to providers, except for the \$25 processing fee for conducting a check of the Statewide Central Registry of Child Abuse and Maltreatment. Compliance with the enhanced background checks and additional training requirements is anticipated to be the primary fiscal burden for child care providers due to time lost from providing care. However, the Office offers a variety of training courses, at no cost to child care programs, that would satisfy the proposed annual training requirement for providers of legally-exempt child care. For those providers that use the Office training courses to satisfy this requirement, the costs will be minimal.

5. Economic and technological feasibility:

This rule has minimal economic or technological impact to small business or local governments.

6. Minimizing adverse impact:

This rule will have minimal adverse impact on small business or local governments. Prior to developing this rule, OCFS collected stakeholder input and developed the standards in a way to minimize a detrimental impact and avoid undue costs. OCFS has exempted relative-only legally-exempt child care providers from the background and inspection requirements. Additionally, these regulations only establish minimal health and safety standards. These requirements do not raise the legally-exempt health and safety standards to the same level of licensed and registered health and safety standards.

7. Small business and local government participation:

OCFS sought input and received and considered comments from legally exempt child care directors, providers, and owners during forums and conferences. The Civil Service Employees Association (CSEA) and the United Federation of Teachers (UFT) provided feedback and comments in the development of the proposed regulations. OCFS has also led discussions and received comment on regulations at professional conferences and forums.

### Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas

This rule applies statewide including to any legally exempt child care programs operating in rural areas of the state. 18 NYCRR Subpart 358-3 and Parts 403, 404, 405, 406 and 415 affect local social services districts, legally-exempt caregiver enrollment agencies, and providers of legally-exempt child care in all 44 rural areas of the State.

2. Reporting, recordkeeping and other compliance requirements; and professional services

This rule is necessary to implement statutory requirements pursuant to the federal Child Care and Development Block Grant Act (CCDBG) of 2014 and corresponding changes to the New York Social Services Law (SSL). This legislation requires enhanced background checks and annual inspections of legally-exempt child care providers. There is an increase in record keeping associated with the proposed changes in background checks. Prospective and existing providers, employees, volunteers and adult family child care household members, unless specifically exempted, are required to complete the background check. Federal law requires rescreening through the background check process no less than once every five years. Additional documentation on health and safety compliance is also required.

3. Costs

The costs associated with this rule are necessary to implement requirements under the CCDBG Act of 2014. While such costs are significant, they are largely born by the Office of Children and Family Services (OCFS). New requirements around enhanced background checks, annual inspections, and additional annual training of legally-exempt child care providers have been estimated to cost approximately \$43 million. At this time, OCFS does not intend to pass the costs related to inspections, training or criminal background checks on to providers, except for the \$25 processing fee for conducting a check of the Statewide Central Registry of Child Abuse and Maltreatment. Compliance with the enhanced background checks and additional training requirements is anticipated to be the pri-

mary fiscal burden for child care providers due to time lost from providing care. However, the Office offers a variety of training courses, at no cost to child care programs, that would satisfy the proposed annual training requirement for providers of legally-exempt child care. For those providers that use the Office training courses to satisfy this requirement, the costs will be minimal.

#### 4. Minimizing adverse impact

This rule will have minimal adverse impact on child care programs or local social services districts in rural areas. Prior to developing this rule, OCFS collected stakeholder input and developed the standards in a way to minimize a detrimental impact and avoid undue costs. OCFS has exempted relative-only legally-exempt child care providers from the background and inspection requirements. Additionally, these regulations only establish minimal health and safety standards. These requirements do not raise the legally-exempt health and safety standards to the same level of licensed and registered health and safety standards.

#### 5. Rural area participation

OCFS received comment from legally exempt child care directors, providers and owners during forums and conferences. The Civil Service Employees Association (CSEA) and the United Federation of teachers (UFT) provided feedback and comment in the development of the proposed regulations. OCFS has also led discussions and received comment on regulations at professional conferences and forums.

#### Job Impact Statement

##### 1. Nature of impact

This rule may impact job opportunities for providers and caregivers at legally exempt child care programs in New York State. The provisions set forth require enhanced background clearances for such persons. As such, an individual may be denied an opportunity or terminated from a position if such background checks produce a criminal history or other information that makes the individual inappropriate for the position. All such background checks are mandated by federal law.

##### 2. Categories and numbers affected

It is anticipated that there are 60,000 legally exempt providers and caregivers subject to this process.

##### 3. Regions of adverse impact

This rule applies throughout New York.

##### 4. Minimizing adverse impact

For non-mandatory disqualifying offenses, the Office is implementing a fair hearing process for anyone denied a role.

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## Department of Civil Service

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### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-25-19-00004-A

**Filing No.** 1112

**Filing Date:** 2019-12-06

**Effective Date:** 2019-12-24

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from the non-competitive class.

**Text or summary was published** in the June 19, 2019 issue of the Register, I.D. No. CVS-25-19-00004-P.

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

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

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-29-19-00002-A

**Filing No.** 1113

**Filing Date:** 2019-12-06

**Effective Date:** 2019-12-24

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

**Action taken:** Amendment of Appendices 1 and 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class and to delete positions from and classify a position in the non-competitive class.

**Text or summary was published** in the July 17, 2019 issue of the Register, I.D. No. CVS-29-19-00002-P.

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

**Text of 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

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-34-19-00002-A

**Filing No.** 1114

**Filing Date:** 2019-12-06

**Effective Date:** 2019-12-24

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

**Action taken:** Amendment of Appendices 1 and 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt and non-competitive classes.

**Text or summary was published** in the August 21, 2019 issue of the Register, I.D. No. CVS-34-19-00002-P.

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

**Text of 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

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-34-19-00003-A

**Filing No.** 1115

**Filing Date:** 2019-12-06

**Effective Date:** 2019-12-24

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text or summary was published** in the August 21, 2019 issue of the Register, I.D. No. CVS-34-19-00003-P.

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

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

*Assessment of Public Comment*

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-34-19-00005-A

**Filing No.** 1117

**Filing Date:** 2019-12-06

**Effective Date:** 2019-12-24

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

**Action taken:** 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 or summary was published** in the August 21, 2019 issue of the Register, I.D. No. CVS-34-19-00005-P.

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

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

*Assessment of Public Comment*

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-34-19-00006-A

**Filing No.** 1110

**Filing Date:** 2019-12-06

**Effective Date:** 2019-12-24

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from the non-competitive class.

**Text or summary was published** in the August 21, 2019 issue of the Register, I.D. No. CVS-34-19-00006-P.

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

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

*Assessment of Public Comment*

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-34-19-00007-A

**Filing No.** 1118

**Filing Date:** 2019-12-06

**Effective Date:** 2019-12-24

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from the non-competitive class.

**Text or summary was published** in the August 21, 2019 issue of the Register, I.D. No. CVS-34-19-00007-P.

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

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

*Assessment of Public Comment*

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-34-19-00008-A

**Filing No.** 1119

**Filing Date:** 2019-12-06

**Effective Date:** 2019-12-24

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a subheading and to delete a position in the non-competitive class.

**Text or summary was published** in the August 21, 2019 issue of the Register, I.D. No. CVS-34-19-00008-P.

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

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

*Assessment of Public Comment*

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-34-19-00009-A

**Filing No.** 1111

**Filing Date:** 2019-12-06

**Effective Date:** 2019-12-24

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text or summary was published** in the August 21, 2019 issue of the Register, I.D. No. CVS-34-19-00009-P.

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

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

*Assessment of Public Comment*

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-34-19-00010-A

**Filing No.** 1120

**Filing Date:** 2019-12-06

**Effective Date:** 2019-12-24

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

**Action taken:** Amendment of Appendices 1 and 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt and non-competitive classes.

**Text or summary was published** in the August 21, 2019 issue of the Register, I.D. No. CVS-34-19-00010-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

## Division of Criminal Justice Services

### EMERGENCY RULE MAKING

#### Use of Force

**I.D. No.** CJS-30-19-00010-E

**Filing No.** 1123

**Filing Date:** 2019-12-06

**Effective Date:** 2019-12-06

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

**Action taken:** Addition of Part 6058 to Title 9 NYCRR.

**Statutory authority:** Executive Law, sections 837-t and 837(13)

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

**Specific reasons underlying the finding of necessity:** At the forefront of the national discussion involving policing in America is law enforcement's use of force, and the lack of statistical data to analyze use of force incidents.

The proposed rule sets forth reporting and recordkeeping procedures, regarding use of force pursuant to section 837-t of the Executive Law, to be followed by the chief of every police department, each county sheriff, and the Superintendent of State Police which employs police officers or peace officers, and by the Division of Criminal Justice Services (Division). The proposed regulations require such employers of police and peace officers to report, to the Division, any instance or occurrence where a police or peace officer employs use of force. In addition, on an annual basis, the Commissioner of the Division is required to conspicuously publish on the Division's website a comprehensive report including the use of force information received.

Repeated and highly publicized incidents of police use of force, and lack of data about these incidents, leaves an impression that there is a lack of accountability by police officers in these cases. The proposed rule provides a mechanism to produce a comprehensive view of use of force incidents reported, including the circumstances, subjects, and officers involved in such incidents. This data can subsequently assist with improving policies and procedures regarding use of force, providing better analyses of reported incidents, and increasing public awareness. This is necessary for the preservation of public safety and the general welfare of people of the State of New York, as it will foster better relations between police and the communities they serve.

On the other hand, the failure to promulgate this rule on an emergency basis will undermine public safety, as the use of force by police, especially if excessive and unchecked, is unsafe for the community, and detrimental to its general welfare. For that reason, it would, in this case, be contrary to public interest to adhere to the normal requirements of the regulation and rule proposal process.

**Subject:** Use of Force.

**Purpose:** Set forth use of force reporting and recordkeeping procedures.

**Text of emergency rule:** Part 6058 - USE OF FORCE DATA COLLECTION, ANALYSIS AND REPORTING

#### 6058.1 Purpose.

At the forefront of the national discussion involving policing in America is law enforcement use of force, and the lack of statistical data to analyze use of force incidents.

The purpose of this Part is to set forth reporting and recordkeeping procedures, regarding use of force pursuant to section 837-t of the Executive Law, to be followed by the chief of every police department, each county sheriff, and the superintendent of state police which employs police officers or peace officers, and by the Division of Criminal Justice Services.

#### 6058.2 Definitions.

As used in this Part, the following terms shall have the following meanings:

(a) *Division* means the Division of Criminal Justice Services.

(b) *Commissioner* means the Commissioner of the Division of Criminal Justice Services, or his or her designee.

(c) *FBI* means the Federal Bureau of Investigation.

(d) *Employer* means the chief of every police department, each county sheriff, and the superintendent of state police which employs police officers or peace officers.

(e) *Police officer* means a person designated as such in section 1.20(34) of the Criminal Procedure Law.

(f) *Peace officer* means a person designated as such in section 2.10 of the Criminal Procedure Law.

(g) *Use of force* means when a police officer or peace officer does the following:

(1) brandishes, uses or discharges a firearm at or in the direction of another person; or

(2) uses a chokehold or similar restraint that applies pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air; or

(3) displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas; or

(4) brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy; or

(5) brandishes, uses or deploys an electronic control weapon, including, but not limited to, an electronic stun gun, flash bomb or long-range acoustic device; or

(6) engages in conduct which results in the death or serious bodily injury of another person.

(h) *Serious bodily injury* means a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss of impairment of the function of a bodily member, organ or mental faculty.

#### 6058.3 Employer Reporting Requirements.

(a) Each employer shall, in the form and manner set forth in section 6058.4 of this Part, submit or cause to be submitted any instance or occurrence where a police or peace officer employed by it employs use of force.

(b) Each employer shall, in the form and manner set forth in section 6058.4 of this Part, with respect to each use of force event reported, submit or cause to be submitted the following:

(1) the type of use of force;

(2) the date of the event;

(3) village, town, or city, and county location of the event;

(4) the law enforcement agencies involved;

(5) a description of the circumstances of the event;

(6) the race, sex, ethnicity, and age (or, if unknown, approximate age)

of all persons engaging in the use of force; and

(7) the race, sex, ethnicity, and age (or, if unknown, approximate age) of all persons suffering an injury from the use of force.

(c) Each employer shall, in the form and manner set forth in section 6058.4 of this Part, submit or cause to be submitted any additional information the commissioner may require the employer to report, including, but not limited to, use of force events and incident information, subject information, and officer information related to each event as required by the FBI in coordination with the FBI's Uniform Crime Reporting ("UCR") Program.

#### 6058.4 Employer Reporting Form.

Each employer shall submit all information required to be reported in accordance with section 6058.3 of this Part to the division in the form and manner as prescribed by the division.

#### 6058.5 Division Reporting Requirements.

(a) On an annual basis, the commissioner shall conspicuously publish on the division's website a comprehensive report including the use of force information received under section 6058.3 of this Part during the preceding year.

(b) Such reports shall not identify the names of the individuals involved, but for each use of force event reported, shall list the following in accordance with section 837-t of the executive law:

(1) the type of use of force;

(2) the date of the event;

(3) the location of the event disaggregated by county and law enforcement agencies involved;

(4) the town or city where the event occurred;

(5) any additional relevant location information;

- (6) a description of the circumstances of the event;
- (7) the race, sex, ethnicity, age (or, if unknown, approximate age) of all persons engaging in the use of force; and
- (8) the race, sex, ethnicity, age (or, if unknown, approximate age) of all persons suffering an injury from the use of force.

**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. CJS-30-19-00010-EP, Issue of July 24, 2019. The emergency rule will expire December 31, 2019.

**Text of rule and any required statements and analyses may be obtained from:** Natasha Harvin-Locklear, Esq., Division of Criminal Justice Services, 80 S. Swan St., Albany, NY 12210, (518) 457-8413, email: dcjslegalrulemaking@dcjs.ny.gov

**Regulatory Impact Statement**

1. Statutory authority: The authority for the promulgation of these regulations is contained in Executive Law § 837-t and Executive Law § 837(13).

Executive Law § 837-t sets forth use of force reporting procedures to be followed by the chief of every police department, each county sheriff, and the Superintendent of State Police which employs police officers or peace officers, and by the Division of Criminal Justice Services (Division).

Executive Law § 837(13) authorizes the Division to adopt, amend or rescind regulations “as may be necessary or convenient to the performance of the functions, powers and duties of the [D]ivision.”

2. Legislative objectives: Chapter 55 of the Laws of 2019 added Executive Law § 837-t. Pursuant to that section, the chief of every police department, each county sheriff, and the Superintendent of State Police is required to report, to the Division, any instance or occurrence in which one of its police officers or peace officers employs use of force. This includes the following:

- (a) brandishes, uses or discharges a firearm at or in the direction of another person; or
- (b) uses a chokehold or similar restraint that applies pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air; or
- (c) displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas; or
- (d) brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy; or
- (e) brandishes, uses or deploys an electronic control weapon, including, but not limited to, an electronic stun gun, flash bomb or long-range acoustic device; or
- (f) engages in conduct which results in the death or serious bodily injury of another person.

In addition, on an annual basis, the Commissioner of the Division is required to conspicuously publish on the Division’s website a comprehensive report including the use of force information received, such as:

- (a) the type of use of force;
- (b) the date of the event;
- (c) the location of the event disaggregated by county and law enforcement agencies involved;
- (d) the town or city where the event occurred;
- (e) any additional relevant location information;
- (f) a description of the circumstances of the event;
- (g) the race, sex, ethnicity, age (or, if unknown, approximate age) of all persons engaging in the use of force; and
- (h) the race, sex, ethnicity, age (or, if unknown, approximate age) of all persons suffering an injury from such use of force.

3. Needs and benefits: At the forefront of the national discussion involving policing in America is law enforcement’s use of force, and the lack of statistical data to analyze use of force incidents.

The proposed rule sets forth reporting and recordkeeping procedures, regarding use force pursuant to section 837-t of the Executive Law, to be followed by the chief of every police department, each county sheriff, and the Superintendent of State Police which employs police officers or peace officers, and by the Division. The proposed regulations require such employers of police and peace officers to report, to the Division, any instance or occurrence where a police or peace officer employs use of force. In addition, on an annual basis, the Commissioner of the Division is required to conspicuously publish on the Division’s website a comprehensive report including the use of force information received.

Repeated and highly publicized incidents of police use of force, and lack of data about these incidents, leaves an impression that there is a lack of accountability by police officers in these cases. The proposed rule provides a mechanism to produce a comprehensive view of use of force incidents reported, including the circumstances, subjects, and officers involved in such incidents. This data can subsequently assist with improving policies and procedures regarding use of force, providing better

analyses of reported incidents, and increasing public awareness. This is necessary for the preservation of public safety and the general welfare of people of the State of New York, as it will foster better relations between police and the communities they serve.

4. Costs: No funds were appropriated in the Budget to offset any costs to regulated parties, the agency, or State and local governments for the implementation of and continuing compliance with the rule. However, the costs (and potential savings) are undetermined, but are expected to include:

- the training of police officers and peace officers on the new use of force reporting requirements;
- the creation/modification of use of force reporting forms and/or systems;
- professional services to create/update use of force forms and/or systems;
- professional services to update websites, and website hosting and maintenance fees;
- the use of existing resources; and
- the fact that most, if not all, of the information that must be reported is already gathered or reported for other purposes.

5. Local government mandates: The proposed regulations will require employers of police and peace officers to report, to the Division, any instance or occurrence where a police or peace officer employed by it employs use of force.

6. Paperwork: The employers may have paperwork within its agency. However, each employer shall submit all information required to be reported to the Division electronically.

7. Duplication: The FBI established the National Use of Force Data Collection. However, participation by law enforcement is voluntary.

8. Alternatives: There are no alternatives. The proposed rule is pursuant to legislation.

9. Federal standards: The National Use of Force Data Collection includes three types of events:

- (a) when use of force by a law enforcement officer causes a fatality;
- (b) when use of force by a law enforcement officer causes serious bodily injury; and
- (c) in the absence of either death or serious bodily injury, when a law enforcement officer discharges a firearm at or in the direction of a person.

The National Use of Force Data Collection also includes extensive incident information, subject information, and officer information related to each event.

10. Compliance schedule: Regulated parties are expected to be able to achieve compliance with the proposed rule as soon as it is adopted.

**Regulatory Flexibility Analysis**

1. Effect of rule: The proposed rule applies to every police department and sheriff’s office in New York State, and the New York State Police. The proposal does not apply to small businesses.

2. Compliance requirements: The proposed rule implements Executive Law § 837-t, which requires the chief of every police department, each county sheriff, and the Superintendent of State Police to report, to the Division of Criminal Justice Services (Division), any instance or occurrence in which one of its police officers or peace officers employs use of force. This includes the following:

- (a) brandishes, uses or discharges a firearm at or in the direction of another person; or
- (b) uses a chokehold or similar restraint that applies pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air; or
- (c) displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas; or
- (d) brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy; or
- (e) brandishes, uses or deploys an electronic control weapon, including, but not limited to, an electronic stun gun, flash bomb or long-range acoustic device; or
- (f) engages in conduct which results in the death or serious bodily injury of another person.

In addition, on an annual basis, the Commissioner of the Division is required to conspicuously publish on the Division’s website a comprehensive report including the use of force information received, such as:

- (a) the type of use of force;
- (b) the date of the event;
- (c) the location of the event disaggregated by county and law enforcement agencies involved;
- (d) the town or city where the event occurred;
- (e) any additional relevant location information;
- (f) a description of the circumstances of the event;
- (g) the race, sex, ethnicity, age (or, if unknown, approximate age) of all persons engaging in the use of force; and
- (h) the race, sex, ethnicity, age (or, if unknown, approximate age) of all persons suffering an injury from the use of force.

3. Professional services: Professional printing and/or IT services will be needed to comply with the proposed rule.

4. Compliance costs: No funds were appropriated in the Budget to offset any costs to regulated parties, the agency, or State and local governments for the implementation of and continuing compliance with the rule. However, the costs (and potential savings) are undetermined, but are expected to include:

- the training of police officers and peace officers on the new use of force reporting requirements;
- the creation/modification of use of force reporting forms and/or systems;
- professional services to create/update use of force forms and/or systems;
- professional services to update websites, and website hosting and maintenance fees;
- the use of existing resources; and
- the fact that most, if not all, of the information that must be reported is already gathered or reported for other purposes.

5. Economic and technological feasibility: No economic or technological impediments to compliance have been identified.

6. Minimizing adverse impact: The mandates on local governments are minimal as law enforcement agencies already submit crime reports to the Division. Each employer is required to submit all information to the Division electronically.

7. Small business and local government participation: Use of force has long been a topic of discussion. A Use of Force Model Policy that references the new reporting requirements of Executive Law § 837-t, which are codified in the proposed regulations, was discussed and approved by the Municipal Police Training Council, which consists of members who are sheriffs, chiefs of police or commissioners of police, and the commissioner of New York City. The proposal does not apply to small businesses.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: The rule applies to every police department and sheriff's office in New York State, and the New York State Police. Many law enforcement agencies are located in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The proposed rule implements Executive Law § 837-t, which requires the chief of every police department, each county sheriff, and the Superintendent of State Police to report, to the Division of Criminal Justice Services (Division), any instance or occurrence in which one of its police officers or peace officers employs use of force. This includes the following:

- (a) brandishes, uses or discharges a firearm at or in the direction of another person; or
- (b) uses a chokehold or similar restraint that applies pressure to the throat or windpipe of a person in a manner that may hinder breathing or reduce intake of air; or
- (c) displays, uses or deploys a chemical agent, including, but not limited to, oleoresin capsicum, pepper spray or tear gas; or
- (d) brandishes, uses or deploys an impact weapon, including, but not limited to, a baton or billy; or
- (e) brandishes, uses or deploys an electronic control weapon, including, but not limited to, an electronic stun gun, flash bomb or long-range acoustic device; or
- (f) engages in conduct which results in the death or serious bodily injury of another person.

In addition, on an annual basis, the Commissioner of the Division is required to conspicuously publish on the Division's website a comprehensive report including the use of force information received, such as:

- (a) the type of use of force;
- (b) the date of the event;
- (c) the location of the event disaggregated by county and law enforcement agencies involved;
- (d) the town or city where the event occurred;
- (e) any additional relevant location information;
- (f) a description of the circumstances of the event;
- (g) the race, sex, ethnicity, age (or, if unknown, approximate age) of all persons engaging in the use of force; and
- (h) the race, sex, ethnicity, age (or, if unknown, approximate age) of all persons suffering an injury from the use of force.

Each employer is required to submit all information as part of the employer's monthly crime reports to the Division. Thus, the mandates on local governments are minimal as law enforcement agencies already report incident data to the Division.

Professional printing and/or IT services will be needed to comply with the proposed rule.

3. Costs: No funds were appropriated in the Budget to offset any costs to regulated parties, the agency, or State and local governments for the implementation of and continuing compliance with the rule. However, the costs (and potential savings) are undetermined, but are expected to include:

- the training of police officers and peace officers on the new use of force reporting requirements;
- the creation/modification of use of force reporting forms and/or systems;
- professional services to create/update use of force forms and/or systems;
- professional services to update websites, and website hosting and maintenance fees;
- the use of existing resources; and
- the fact that most, if not all, of the information that must be reported is already gathered or reported for other purposes.

4. Minimizing adverse impact: The mandates on local governments are minimal as law enforcement agencies already submit crime reports to the Division. Each employer is required to submit all information to the Division electronically.

5. Rural area participation: Use of force has long been a topic of discussion. A Use of Force Model Policy that references the new reporting requirements of Executive Law § 837-t, which are codified in the proposed regulations, was discussed and approved by the Municipal Police Training Council, which consists of members who are sheriffs, chiefs of police or commissioners of police, and the commissioner of New York City.

#### **Job Impact Statement**

A Job Impact Statement is not being submitted with this Notice of Emergency Adoption and Proposed Rule Making because it is evident from the subject matter of the regulation that it will have no adverse impact on jobs or employment opportunities.

The proposed rule merely sets forth use of force reporting procedures to be followed by the chief of every police department, each county sheriff, and the Superintendent of State Police which employs police officers or peace officers, and by the Division of Criminal Justice Services.

#### **Assessment of Public Comment**

The agency received no public comment.

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## Education Department

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### EMERGENCY RULE MAKING

#### **Instructional Time for State Aid Purposes**

**I.D. No.** EDU-31-19-00009-E

**Filing No.** 1122

**Filing Date:** 2019-12-06

**Effective Date:** 2019-12-06

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

**Action taken:** Amendment of section 175.5 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101, 207, 305, 3602, 3604 and 3609-a

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

**Specific reasons underlying the finding of necessity:** The proposed amendment is necessary for the preservation of the general welfare to provide schools districts with notice that if they cannot meet the minimum instructional requirements due to safety and/or scheduling issues they can apply to the Commissioner for a single waiver for up to four school years of such requirements by November 15, 2019.

A first emergency rule was adopted at the July meeting and expired on October 13, 2019. A second emergency rule was adopted at the October meeting which will expire on December 6, 2019. A third emergency action at the November meeting is necessary to preserve the general welfare and to ensure that the proposed amendment will remain in effect until it can be permanently adopted at the December 2019 Regents meeting and to ensure that school districts are on notice that they must apply for the waiver by November 15, 2019.

**Subject:** Instructional Time for State Aid purposes.

**Purpose:** To provide school districts with additional flexibility when establishing their school calendars.

**Text of emergency rule:** New subdivisions (k) and (l) shall be added to section 175.5 of the Regulations of the Commissioner of Education to read as follows:

(k) All claims submitted by school districts in accordance with section

175.10 of this Part for the payment of State aid for the 2019-2020 school year and thereafter shall include the total number of instructional hours, non-instructional hours, and session days for each grade level in each school within the school district, and a completed calendar worksheet in a format prescribed by the commissioner for each such school within the school district.

(1)(1) Notwithstanding any other provision of this section to the contrary, certain school districts that have demonstrated a safety issue and/or other scheduling challenges that prevented them from complying with the annual instructional hour requirement set forth in subdivision (c) of this section in the 2018-2019 school year may apply to the Commissioner by November 15, 2019 for a single waiver for up to four school years from such requirement for the 2018-2019, 2019-2020, 2020-2021 and/or 2021-2022 school years; provided that such school district meets the following requirements:

(i) the school district must be in session for at least 180 school days in each school year, which shall include superintendent's conference days authorized under this section;

(ii) the school district must attest that the annual instructional hours for the 2018-2019 and 2019-2020 school years will be at least equal to the annual instructional hours provided in the 2017-2018 school year and that for the 2020-2021 and 2021-2022 school years the school district will demonstrate that the total number of its schools that are in compliance with the instructional hour requirements will increase annually by increments of no less than one-third, resulting in full compliance in the 2022-2023 school year;

(iii) the school district must describe the safety and/or scheduling challenges that prevented the school district from complying with such requirements; and

(iv) the school district must provide a plan to the Commissioner as to how it will comply with the instructional hour requirement in the 2022-2023 school year for all schools in the district.

(2) The Commissioner will post a list of school districts with approved waivers for the 2018-2019, 2019-2020, 2020-2021 and/or 2021-2022 school years on the Department's website.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-31-19-00009-EP, Issue of July 31, 2019. The emergency rule will expire February 3, 2020.

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

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY:

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

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

Education Law §§ 305(1) and (2) provide Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents.

Education Law § 3602 provides for the apportionment of public moneys to school districts employing eight or more teachers.

Education Law § 3604 sets forth the conditions under which districts are entitled to apportionment of State aid, including that districts must be in session in the district for not less than 190 days.

Education Law § 3609-a provides for the when and how apportioned moneys are payable.

##### 2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary for the preservation of the general welfare to provide schools districts with notice that if they cannot meet the minimum instructional requirements due to safety and/or scheduling issues they can apply to the Commissioner for a single waiver for up to four school years of such requirements.

##### 3. NEEDS AND BENEFITS:

At its December 2017 meeting, the Department proposed an amendment to the regulation to eliminate the current daily minimum instructional hour requirement and replace it with an aggregate yearly requirement (i.e., 900/990 hours over 180 days for full-day kindergarten through grade six and grades seven through twelve, respectively), to provide school districts

with additional flexibility when establishing their school calendars. The Board of Regents adopted the revised proposed regulation as a permanent rule at the September 2018 meeting.

Concerns have been raised by a small number of school districts that have indicated that due to safety issues and/or other scheduling challenges, they are unable to meet the minimum annual instructional hour requirements, the proposed amendment allows such school districts to apply to the Commissioner by November 15, 2019 for a waiver for up to four school years (2018-2019, 2019-2020, 2020-2021 and/or 2021-2022 school years); provided that such school district meets the following requirements:

- the school district must be in session for at least 180 school days in each school year, which shall include superintendent's conference days authorized under this section;

- the school district must attest that the annual instructional hours for the 2018-2019 and 2019-2020 school years will be at least equal to the annual instructional hours provided in the 2017-2018 school year and that in each subsequent year of the waiver the school district will demonstrate that the total number of its schools that are in compliance with the instructional hour requirements will increase annually by increments of no less than one-third (e.g. 33% of all schools in 2020-2021, 66% in 2021-2022, resulting in 100% compliance in 2022-2023);

- the school district must describe the safety and/or scheduling challenges that prevented the school district from complying with such requirements; and

- the school district must provide a plan to the Commissioner as to how it will comply with the instructional hour requirement in the 2022-2023 school year for all schools in the district.

The proposed amendment also provides that the Commissioner will post a list of school districts with approved waivers for the 2018-2019, 2019-2020, 2020-2021 and/or 2021-2022 school years on the Department's website and that all claims submitted by school districts for the payment of State aid for the 2019-2020 school year and thereafter shall include the total number of instructional hours, non-instructional hours, and session days for each grade level in each school within the school district, and a completed calendar worksheet in a format prescribed by the commissioner for each such school within the school district.

During the waiver period, Department staff will work with school districts to identify and address any emerging issues, particularly those related to safety.

##### 4. COSTS:

Cost to the State: None.

Costs to local government: There are no additional costs beyond those imposed by the statute.

Cost to private regulated parties: There are no additional costs beyond those imposed by the statute.

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

##### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment authorizes school districts who cannot meet the minimum instructional requirements due to safety and/or scheduling issues to apply to the Commissioner for a single waiver for up to four school years of such requirements.

##### 6. PAPERWORK:

See Section 5 above. Also, the proposed amendment requires all school districts who receive a waiver to provide a plan to the Commissioner as to how it will comply with the instructional hour requirement in the 2022-2023 school year for all schools in the district. Additionally, the proposed amendment provides that all claims submitted by school districts for the payment of State aid for the 2019-2020 school year and thereafter shall include the total number of instructional hours, non-instructional hours, and session days for each grade level in each school within the school district, and a completed calendar worksheet in a format prescribed by the commissioner for each such school within the school district.

##### 7. DUPLICATION:

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

##### 8. ALTERNATIVES:

The proposed amendment is necessary for the preservation of the general welfare to provide schools districts with notice that if they cannot meet the minimum instructional requirements due to safety and/or scheduling issues they can apply to the Commissioner for a single waiver for up to four school years of such requirements by November 15, 2019. No significant alternatives to the proposed amendment and none were considered.

##### 9. FEDERAL STANDARDS:

There are no applicable Federal standards.

##### 10. COMPLIANCE SCHEDULE:

If adopted at the July 2019 Regents meeting, the proposed amendment will become effective as an emergency rule on July 16, 2019. Following the 60-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be pre-

sented to the Board of Regents for permanent adoption at its October 2019 meeting. If adopted at the October 2019 meeting, the proposed amendment will become effective on October 23, 2019. A second emergency action will also be needed at the October meeting to ensure that the emergency rule adopted at the July meeting remains continuously in effect until it can be adopted as a permanent rule.

#### **Regulatory Flexibility Analysis**

##### **(a) Small businesses:**

The proposed amendment is necessary for the preservation of the general welfare to provide schools districts with notice that if they cannot meet the minimum instructional requirements due to safety and/or scheduling issues they can apply to the Commissioner for a single waiver for up to four school years of such requirements, and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses.

Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

##### **1. EFFECT OF RULE:**

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

##### **2. COMPLIANCE REQUIREMENTS:**

The proposed amendment requires all school districts that receive a waiver to provide a plan to the Commissioner as to how it will comply with the instructional hour requirement in the 2022-2023 school year for all schools in the district. Additionally, the proposed amendment provides that the Commissioner will post a list of school districts with approved waivers for the 2018-2019, 2019-2020, 2020-2021 and/or 2021-2022 school years on the Department's website and that all claims submitted by school districts for the payment of State aid for the 2019-2020 school year and thereafter shall include the total number of instructional hours, non-instructional hours, and session days for each grade level in each school within the school district, and a completed calendar worksheet in a format prescribed by the commissioner for each such school within the school district. The proposed regulation does not impose any program, service, duty or responsibility on small businesses beyond those inherent in the regulation.

##### **3. NEEDS AND BENEFITS:**

At its December 2017 meeting, the Department proposed an amendment to the regulation to eliminate the current daily minimum instructional hour requirement and replace it with an aggregate yearly requirement (i.e., 900/990 hours over 180 days for full-day kindergarten through grade six and grades seven through twelve, respectively), to provide school districts with additional flexibility when establishing their school calendars. The Board of Regents adopted the revised proposed regulation as a permanent rule at the September 2018 meeting.

Concerns have been raised by a small number of school districts that have indicated that due to safety issues and/or other scheduling challenges, they are unable to meet the minimum annual instructional hour requirements, the proposed amendment allows such school districts to apply to the Commissioner by November 15, 2019 for a waiver for up to four school years (2018-2019, 2019-2020, 2020-2021 and/or 2021-2022 school years); provided that such school district meets the following requirements:

- the school district must be in session for at least 180 school days in each school year, which shall include superintendent's conference days authorized under this section;
- the school district must attest that the annual instructional hours for the 2018-2019 and 2019-2020 school years will be at least equal to the annual instructional hours provided in the 2017-2018 school year and that in each subsequent year of the waiver the school district will demonstrate that the total number of its schools that are in compliance with the instructional hour requirements will increase annually by increments of no less than one-third (e.g. 33% of all schools in 2020-2021, 66% in 2021-2022, resulting in 100% compliance in 2022-2023);
- the school district must describe the safety and/or scheduling challenges that prevented the school district from complying with such requirements; and
- the school district must provide a plan to the Commissioner as to how it will comply with the instructional hour requirement in the 2022-2023 school year for all schools in the district.

The proposed amendment also provides that the Commissioner will post a list of school districts with approved waivers for the 2018-2019, 2019-2020, 2020-2021 and/or 2021-2022 school years on the Department's website and that all claims submitted by school districts for the payment of State aid for the 2019-2020 school year and thereafter shall include the total number of instructional hours, non-instructional hours, and session days for each grade level in each school within the school district, and a completed calendar worksheet in a format prescribed by the commissioner for each such school within the school district.

During the waiver period, Department staff will work with school districts to identify and address any emerging issues, particularly those related to safety.

##### **4. PROFESSIONAL SERVICES:**

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

##### **5. COMPLIANCE COSTS:**

In general, the proposed amendment does not impose any additional costs on local governments and small businesses.

##### **6. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

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

##### **7. MINIMIZING ADVERSE IMPACT:**

The proposed amendment is necessary for the preservation of the general welfare to provide schools districts with notice that if they cannot meet the minimum instructional requirements due to safety and/or scheduling issues they can apply to the Commissioner for a single waiver for up to four school years of such requirements. Accordingly, no alternatives were considered.

##### **8. LOCAL GOVERNMENT PARTICIPATION:**

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

#### **Rural Area Flexibility Analysis**

##### **1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:**

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

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

The proposed amendment is necessary for the preservation of the general welfare to provide school districts with notice that if they cannot meet the minimum instructional requirements due to safety and/or scheduling issues they can apply to the Commissioner for a single waiver for up to four school years of such requirements. The proposed amendment requires all school districts that receive a waiver to provide a plan to the Commissioner as to how it will comply with the instructional hour requirement in the 2022-2023 school year for all schools in the district. Additionally, the proposed amendment provides that the Commissioner will post a list of school districts with approved waivers for the 2018-2019, 2019-2020, 2020-2021 and/or 2021-2022 school years on the Department's website and that all claims submitted by school districts for the payment of State aid for the 2019-2020 school year and thereafter shall include the total number of instructional hours, non-instructional hours, and session days for each grade level in each school within the school district, and a completed calendar worksheet in a format prescribed by the commissioner for each such school within the school district.

##### **3. COMPLIANCE COSTS:**

The proposed amendment does not impose any additional costs on the State, regulated parties, or the State Education Department.

##### **4. MINIMIZING ADVERSE IMPACT:**

The proposed amendment is merely provides school districts with notice that if they cannot meet the minimum instructional requirements due to safety and/or scheduling issues they can apply to the Commissioner for a single waiver for up to four school years of such requirements. Because the statutory requirement upon which the proposed amendment is based applies to all schools in the State, 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 amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

#### **Job Impact Statement**

The proposed rule is necessary for the preservation of the general welfare to provide schools districts with notice that if they cannot meet the minimum instructional requirements due to safety and/or scheduling issues they can apply to the Commissioner for a single waiver for up to four school years of such requirements.

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

#### **Assessment of Public Comment**

COMMENT: Commenter continues to object to the Department's determination that passing time and homeroom may not count toward the annual instructional time hourly requirement.

RESPONSE: The comment is outside the scope of the proposed amendment and therefore, no response is necessary.

COMMENT: The commenter states that the waiver process contained in the emergency regulations is overly burdensome and requires school districts to notify the Department that they failed to comply with the instructional requirements in 2018-2019. The commenter requests a more streamlined process where school districts would attest that the district will be unable to fully comply with the new instructional time regulations due to safety or scheduling issues and the district promises to be in full compliance with the regulations by the 2022-2023 school year and that districts will meet the 180 day statutory requirement and that instructional hours during the waiver period will not be fewer than that provided in the 2017-2018 school year. A district that completes this attestation would receive an automatic waiver until 2022-23.

RESPONSE: The Department has considered the comment and believes that the current waiver process is streamlined and consistent with the regulatory requirements. Therefore, no change is warranted.

## EMERGENCY RULE MAKING

### Annual Professional Performance Reviews of Classroom Teachers and Building Principals

**I.D. No.** EDU-43-19-00012-E

**Filing No.** 1135

**Filing Date:** 2019-12-10

**Effective Date:** 2019-12-10

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

**Action taken:** Repeal of Subpart 30-2; renumbering of Subpart 30-3 to 30-2; addition of new Subpart 30-3 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101, 207, 215, 305, 3009, 3012-d; L. 2019, ch. 59, part YYY

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

**Specific reasons underlying the finding of necessity:** The 2019-2020 Enacted Budget makes several changes to Education Law § 3012-d, which governs annual teacher and principal evaluations. The key changes include:

- Required Student Performance Measures
  - o Eliminates the requirement to use the State Growth Model for teachers of grades 4-8, building principals covering those grade levels, and high school principals (all of grades 9-12).

[ ] All educators would instead have a Student Learning Objective (SLO).

- o Eliminates the requirement that State-created or administered assessments be used as the evidence for SLOs where they exist.

o The selection and use of the assessment(s) for an educator's SLO is now subject to collective bargaining, rather than district determined.

- Optional Student Performance Measures
  - o Eliminates the requirement that optional student performance measures be based either on a second State-provided growth score or a growth score based on a supplemental assessment that uses a State-provided or approved statistical growth model.

[ ] Instead, the Department will define optional measures of student performance based on State-created, administered, or approved assessments that districts may then collectively bargain to use.

o Where a school district collectively bargains to use optional student performance measures, the statutory amendments also eliminate the existing requirement that an educator receive a rating of Ineffective on their overall evaluation if their Student Performance Category rating is Ineffective.

The changes made to Education Law § 3012-d became effective on April 1, 2019 and the proposed amendment implements those requirements.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) Sections 202(1) and (5), is the February 2020 Regents meeting. Furthermore, pursuant to SAPA Section 203(1), the earliest effective date of the proposed amendment, if adopted at the February Regents meeting, is February 26, 2020, the date a Notice of Adoption would be published in the State Register. However, because Section 52-m of Part YYY of Chapter 59 of the Laws of 2019 became effective on April 1, 2019, emergency action is necessary now for the preservation of the

general welfare in order to conform Subpart 30 of the Rules of the Board of Regents with the amendments made to Education Law § 3012-d, as amended by Chapter 59 of the Laws of 2019.

**Subject:** Annual Professional Performance Reviews of Classroom Teachers and Building Principals.

**Purpose:** Necessary to implement part YYY of chapter 59 of the Laws of 2019.

**Substance of emergency rule (Full text is posted at the following State website: <http://www.counsel.nysed.gov/rules/full-text-indices>):** The purpose of the proposed regulation is to align the Commissioner's Regulation's with the amendments made to Education Law § 3012-d by Part YYY of Chapter 59 of the Laws of 2019 relating to annual professional performance reviews of classroom teachers and building principals.

The 2019-2020 Enacted Budget makes several changes to Education Law § 3012-d, which governs annual teacher and principal evaluations. The key changes include:

- Required Student Performance Measures
  - o Eliminates the requirement to use the State Growth Model for teachers of grades 4-8, building principals covering those grade levels, and high school principals (all of grades 9-12).

[ ] All educators would instead have a Student Learning Objective (SLO).

- o Eliminates the requirement that State-created or administered assessments be used as the evidence for SLOs where they exist.

o The selection and use of the assessment(s) for an educator's SLO is now subject to collective bargaining, rather than district determined.

- Optional Student Performance Measures
  - o Eliminates the requirement that optional student performance measures be based either on a second State-provided growth score or a growth score based on a supplemental assessment that uses a State-provided or approved statistical growth model.

[ ] Instead, the Department will define optional measures of student performance based on State-created, administered, or approved assessments that districts may then collectively bargain to use.

o Where a school district collectively bargains to use optional student performance measures, the statutory amendments also eliminate the existing requirement that an educator receive a rating of Ineffective on their overall evaluation if their Student Performance Category rating is Ineffective.

Although the Enacted Budget makes significant changes to the Student Performance Category of the evaluation system, it does not substantively change any other aspects of the current system, including:

- Requirements for teacher observations and principal school visits, including the requirement that at least one be conducted by an independent evaluator.

- Requirements for calculating overall ratings using the statutory matrix.

• Requirements for teacher and principal improvement plans for educators who receive an overall rating of Developing or Ineffective in the prior school year.

- Requirements for summative evaluation ratings to be a "significant factor" in all employment-related decisions.

The proposed rule conforms the regulations to the provisions of the 2019 legislation by making the following substantive changes to Subparts 30-2 and 30-3 of the Rules of the Board of Regents.

The existing Subpart 30-2, relating to evaluations conducted pursuant to Education Law § 3012-c, is repealed.

The existing Subpart 30-3 is renumbered to Subpart 30-2. The title of this new Subpart 30-2 and sections 30-2.1, 30-2.3, and 30-2.17 are amended to clarify that Subpart 30-2 only applies to APPRs conducted prior to the 2019-20 school year or those conducted pursuant to a collective bargaining agreement (CBA) entered into on or before April 12, 2019 which remains in effect on or after April 12, 2019 until a subsequent agreement is reached; provided further, however, that any assessments used in determining transition scores and ratings shall be used in determining scores and ratings pursuant to Subpart 30-2 instead of the grades three through eight English language arts and mathematics state assessments and/or any state growth model until the entry into a successor collective bargaining agreement.

A new Subpart 30-3 is added to implement the amended evaluation law.

Where practicable, existing requirements for teacher and principal evaluations are carried over in their entirety. Below is a description of the areas where substantive changes from existing requirements have been made to implement the provisions of Chapter 59 of the Laws of 2019.

Section 30-3.1 clarifies that the new evaluation system only applies to CBAs entered into after April 12, 2019. It further clarifies that nothing in the new Subpart shall be construed to abrogate any conflicting provisions of any CBA in effect on and after April 12, 2019 during the term of such agreement and until entry into a successor CBA; provided further,

however, that any assessments used in determining transition scores and ratings shall be used in determining scores and ratings pursuant to Subpart 30-2 instead of the grades three through eight English language arts and mathematics state assessments and/or any state growth model until the entry into a successor collective bargaining agreement. As required by the Education Law, it further clarifies that APPRs shall be a significant factor for employment decisions and teacher and principal development, consistent with the requirements of the law. It also clarifies the unfettered right to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reason.

Section 30-3.4 describes the standards and criteria for conducting APPRs of classroom teachers under the amended law. The law requires teachers to be evaluated based on two categories: the student performance category and the teacher observation category.

Section 30-3.5 describes the standards and criteria for conducting APPRs of building principals under the amended law. The law requires the Commissioner to establish a principal evaluation system that is aligned to the teacher evaluation system set forth in Education Law § 3012-d. To implement the law, the proposed amendment requires building principals to be evaluated based on two categories: the student performance category and the school visit category.

Section 30-3.16 describes a process which permits a district or BOCES to apply for a variance from one or more of the provisions of this Subpart to meet specific needs and circumstances of the district or BOCES so long as such plan remains consistent with the requirements of Education Law § 3012-d.

Section 30-3.17 provides for the severability of each section of this Subpart.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-43-19-00012-EP, Issue of October 23, 2019. The emergency rule will expire February 7, 2020.

**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) 474-6400, email: legal@nysed.gov

#### **Regulatory Impact Statement**

##### **1. STATUTORY AUTHORITY:**

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

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

Education Law 215 authorizes the Regents to visit and inspect any educational institution under its supervision in the state and to require reporting from such institutions.

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

Education Law 3012-d provides for the development and implementation of annual professional performance reviews of teachers and principals.

Chapter 59 of the Laws of 2019 amends provisions of Education Law 3012-d relating to the development and implementation of periodic professional performance reviews of teachers and principals.

##### **2. LEGISLATIVE OBJECTIVES:**

The proposed amendments to the requirements for Annual Professional Performance Review plans are consistent with the above statutory authority and are necessary to conform the Commissioner's Regulations to Part YYY of Chapter 59 of the laws of 2019. The purpose of the proposed amendment is to improve the quality of teaching and learning by ensuring that teachers and school leaders receive annual evaluations consistent with the State's Teaching and Leadership Standards leading to opportunities for professional growth and to meet the learning needs of their students.

##### **3. NEEDS AND BENEFITS:**

The 2019-2020 Enacted Budget makes several changes to Education Law § 3012-d, which governs annual teacher and principal evaluations. The key changes include:

- Required Student Performance Measures

- o Eliminates the requirement to use the State Growth Model for teachers of grades 4-8, building principals covering those grade levels, and high school principals (all of grades 9-12).

- o All educators would instead have a Student Learning Objective (SLO).

- o Eliminates the requirement that State-created or administered assessments be used as the evidence for SLOs where they exist.

- o The selection and use of the assessment(s) for an educator's SLO is now subject to collective bargaining, rather than district determined.

- Optional Student Performance Measures

- o Eliminates the requirement that optional student performance measures be based either on a second State-provided growth score or a growth score based on a supplemental assessment that uses a State-provided or approved statistical growth model.

- o Instead, the Department will define optional measures of student performance based on State-created, administered, or approved assessments that districts may then collectively bargain to use.

- o Where a school district collectively bargains to use optional student performance measures, the statutory amendments also eliminate the existing requirement that an educator receive a rating of Ineffective on their overall evaluation if their Student Performance Category rating is Ineffective.

Although the Enacted Budget makes significant changes to the Student Performance Category of the evaluation system, it does not substantively change any other aspects of the current system, including:

- Requirements for teacher observations and principal school visits, including the requirement that at least one be conducted by an independent evaluator.

- Requirements for calculating overall ratings using the statutory matrix.

- Requirements for teacher and principal improvement plans for educators who receive an overall rating of Developing or Ineffective in the prior school year.

- Requirements for summative evaluation ratings to be a "significant factor" in all employment-related decisions.

The proposed rule conforms the regulations to the provisions of the 2019 legislation by making the following substantive changes to Subparts 30-2 and 30-3 of the Rules of the Board of Regents.

The existing Subpart 30-2, relating to evaluations conducted pursuant to Education Law § 3012-c, is repealed.

The existing Subpart 30-3 is renumbered to Subpart 30-2. The title of this new Subpart 30-2 and sections 30-2.1, 30-2.3, and 30-2.17 are amended to clarify that Subpart 30-2 only applies to APPRs conducted prior to the 2019-20 school year or those conducted pursuant to a collective bargaining agreement (CBA) entered into on or before April 12, 2019 which remains in effect on or after April 12, 2019 until a subsequent agreement is reached; provided further, however, that any assessments used in determining transition scores and ratings shall be used in determining scores and ratings pursuant to Subpart 30-2 instead of the grades three through eight English language arts and mathematics state assessments and/or any state growth model until the entry into a successor collective bargaining agreement.

A new Subpart 30-3 is added to implement the amended evaluation law.

Where practicable, existing requirements for teacher and principal evaluations are carried over in their entirety. Below is a description of the areas where substantive changes from existing requirements have been made to implement the provisions of Chapter 59 of the Laws of 2019.

Section 30-3.1 clarifies that the new evaluation system only applies to CBAs entered into after April 12, 2019. It further clarifies that nothing in the new Subpart shall be construed to abrogate any conflicting provisions of any CBA in effect on and after April 12, 2019 during the term of such agreement and until entry into a successor CBA; provided further, however, that any assessments used in determining transition scores and ratings shall be used in determining scores and ratings pursuant to Subpart 30-2 instead of the grades three through eight English language arts and mathematics state assessments and/or any state growth model until the entry into a successor collective bargaining agreement. As required by the Education Law, it further clarifies that APPRs shall be a significant factor for employment decisions and teacher and principal development, consistent with the requirements of the law. It also clarifies the unfettered right to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reason.

Section 30-3.4 describes the standards and criteria for conducting APPRs of classroom teachers under the amended law. The law requires teachers to be evaluated based on two categories: the student performance category and the teacher observation category.

Section 30-3.5 describes the standards and criteria for conducting APPRs of building principals under the amended law. The law requires the Commissioner to establish a principal evaluation system that is aligned to the teacher evaluation system set forth in Education Law § 3012-d. To implement the law, the proposed amendment requires building principals to be evaluated based on two categories: the student performance category and the school visit category.

Section 30-3.16 describes a process which permits a district or BOCES to apply for a variance from one or more of the provisions of this Subpart to meet specific needs and circumstances of the district or BOCES so long as such plan remains consistent with the requirements of Education Law § 3012-d.

Section 30-3.17 provides for the severability of each section of this Subpart.

**4. COSTS:**

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

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

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

d. Costs to regulating agency for implementation and continued administration: The amendments do not impose any costs on the regulating agency for implementation and continued administration.

**5. LOCAL GOVERNMENT MANDATES:**

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

**6. PAPERWORK:**

The proposed amendment does not impose any additional paperwork requirements.

**7. DUPLICATION:**

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

**8. ALTERNATIVES:**

Because the State believes that Annual Professional Performance Review plans are required across the State, no alternatives were considered.

**9. FEDERAL STANDARDS:**

There are no applicable Federal standards.

**10. COMPLIANCE SCHEDULE:**

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on October 30, 2019. The proposed amendment will become effective as an emergency rule on October 8, 2019. It is anticipated that the rule will be presented for permanent adoption at the February Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required pursuant to the State Administrative Procedure Act. It is also expected that a second emergency action will be necessary at the December 2019 Regents meeting to ensure that the emergency rule remains in effect until it can be adopted as a permanent rule.

**Regulatory Flexibility Analysis**

The purpose of the proposed amendment is to conform the Department's regulations to statutory amendments to Education Law 3012-d pursuant to Part YYY of Chapter 59 of the Laws of 2019. The purpose of the regulations is to improve the quality of teaching and learning by ensuring that teachers and school leaders receive annual evaluations consistent with the State's Teaching and Leadership Standards leading to opportunities for professional growth and to meet the learning needs of their students.

The 2019-2020 Enacted Budget makes several changes to Education Law § 3012-d, which governs annual teacher and principal evaluations. The key changes include:

- Required Student Performance Measures

- o Eliminates the requirement to use the State Growth Model for teachers of grades 4-8, building principals covering those grade levels, and high school principals (all of grades 9-12).

- [ ] All educators would instead have a Student Learning Objective (SLO).

- o Eliminates the requirement that State-created or administered assessments be used as the evidence for SLOs where they exist.

- o The selection and use of the assessment(s) for an educator's SLO is now subject to collective bargaining, rather than district determined.

- Optional Student Performance Measures

- o Eliminates the requirement that optional student performance measures be based either on a second State-provided growth score or a growth score based on a supplemental assessment that uses a State-provided or approved statistical growth model.

- [ ] Instead, the Department will define optional measures of student performance based on State-created, administered, or approved assessments that districts may then collectively bargain to use.

- o Where a school district collectively bargains to use optional student performance measures, the statutory amendments also eliminate the existing requirement that an educator receive a rating of Ineffective on their overall evaluation if their Student Performance Category rating is Ineffective.

Although the Enacted Budget makes significant changes to the Student Performance Category of the evaluation system, it does not substantively change any other aspects of the current system, including:

- Requirements for teacher observations and principal school visits, including the requirement that at least one be conducted by an independent evaluator.

- Requirements for calculating overall ratings using the statutory matrix.

- Requirements for teacher and principal improvement plans for educators who receive an overall rating of Developing or Ineffective in the prior school year.

- Requirements for summative evaluation ratings to be a "significant factor" in all employment-related decisions.

The proposed rule conforms the regulations to the provisions of the 2019 legislation by making the following substantive changes to Subparts 30-2 and 30-3 of the Rules of the Board of Regents.

The existing Subpart 30-2, relating to evaluations conducted pursuant to Education Law § 3012-c, is repealed.

The existing Subpart 30-3 is renumbered to Subpart 30-2. The title of this new Subpart 30-2 and sections 30-2.1, 30-2.3, and 30-2.17 are amended to clarify that Subpart 30-2 only applies to APPRs conducted prior to the 2019-20 school year or those conducted pursuant to a collective bargaining agreement (CBA) entered into on or before April 12, 2019 which remains in effect on or after April 12, 2019 until a subsequent agreement is reached; provided further, however, that any assessments used in determining transition scores and ratings shall be used in determining scores and ratings pursuant to Subpart 30-2 instead of the grades three through eight English language arts and mathematics state assessments and/or any state growth model until the entry into a successor collective bargaining agreement.

A new Subpart 30-3 is added to implement the amended evaluation law.

Where practicable, existing requirements for teacher and principal evaluations are carried over in their entirety. Below is a description of the areas where substantive changes from existing requirements have been made to implement the provisions of Chapter 59 of the Laws of 2019.

Section 30-3.1 clarifies that the new evaluation system only applies to CBAs entered into after April 12, 2019. It further clarifies that nothing in the new Subpart shall be construed to abrogate any conflicting provisions of any CBA in effect on and after April 12, 2019 during the term of such agreement and until entry into a successor CBA; provided further, however, that any assessments used in determining transition scores and ratings shall be used in determining scores and ratings pursuant to Subpart 30-2 instead of the grades three through eight English language arts and mathematics state assessments and/or any state growth model until the entry into a successor collective bargaining agreement. As required by the Education Law, it further clarifies that APPRs shall be a significant factor for employment decisions and teacher and principal development, consistent with the requirements of the law. It also clarifies the unfettered right to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reason.

Section 30-3.4 describes the standards and criteria for conducting APPRs of classroom teachers under the amended law. The law requires teachers to be evaluated based on two categories: the student performance category and the teacher observation category.

Section 30-3.5 describes the standards and criteria for conducting APPRs of building principals under the amended law. The law requires the Commissioner to establish a principal evaluation system that is aligned to the teacher evaluation system set forth in Education Law § 3012-d. To implement the law, the proposed amendment requires building principals to be evaluated based on two categories: the student performance category and the school visit category.

Section 30-3.16 describes a process which permits a district or BOCES to apply for a variance from one or more of the provisions of this Subpart to meet specific needs and circumstances of the district or BOCES so long as such plan remains consistent with the requirements of Education Law § 3012-d.

Section 30-3.17 provides for the severability of each section of this Subpart.

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

**Rural Area Flexibility Analysis****1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:**

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

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

The proposed amendments are necessary to conform the Department's regulations to statutory amendments to Education Law 3012-d pursuant to Part YYY of Chapter 59 of the Laws of 2019. The purpose of the regulations is to improve the quality of teaching and learning by ensuring that teachers and school leaders receive annual evaluations consistent with the State's Teaching and Leadership Standards leading to opportunities for professional growth and to meet the learning needs of their students.

The 2019-2020 Enacted Budget makes several changes to Education

Law § 3012-d, which governs annual teacher and principal evaluations. The key changes include:

- Required Student Performance Measures
  - o Eliminates the requirement to use the State Growth Model for teachers of grades 4-8, building principals covering those grade levels, and high school principals (all of grades 9-12).

[ ] All educators would instead have a Student Learning Objective (SLO).

- o Eliminates the requirement that State-created or administered assessments be used as the evidence for SLOs where they exist.
- o The selection and use of the assessment(s) for an educator's SLO is now subject to collective bargaining, rather than district determined.
- Optional Student Performance Measures
  - o Eliminates the requirement that optional student performance measures be based either on a second State-provided growth score or a growth score based on a supplemental assessment that uses a State-provided or approved statistical growth model.

[ ] Instead, the Department will define optional measures of student performance based on State-created, administered, or approved assessments that districts may then collectively bargain to use.

o Where a school district collectively bargains to use optional student performance measures, the statutory amendments also eliminate the existing requirement that an educator receive a rating of Ineffective on their overall evaluation if their Student Performance Category rating is Ineffective.

Although the Enacted Budget makes significant changes to the Student Performance Category of the evaluation system, it does not substantively change any other aspects of the current system, including:

- Requirements for teacher observations and principal school visits, including the requirement that at least one be conducted by an independent evaluator.
- Requirements for calculating overall ratings using the statutory matrix.
- Requirements for teacher and principal improvement plans for educators who receive an overall rating of Developing or Ineffective in the prior school year.
- Requirements for summative evaluation ratings to be a "significant factor" in all employment-related decisions.

The proposed rule conforms to the regulations to the provisions of the 2019 legislation by making the following substantive changes to Subparts 30-2 and 30-3 of the Rules of the Board of Regents.

The existing Subpart 30-2, relating to evaluations conducted pursuant to Education Law § 3012-c, is repealed.

The existing Subpart 30-3 is renumbered to Subpart 30-2. The title of this new Subpart 30-2 and sections 30-2.1, 30-2.3, and 30-2.17 are amended to clarify that Subpart 30-2 only applies to APPRs conducted prior to the 2019-20 school year or those conducted pursuant to a collective bargaining agreement (CBA) entered into on or before April 12, 2019 which remains in effect on or after April 12, 2019 until a subsequent agreement is reached; provided further, however, that any assessments used in determining transition scores and ratings shall be used in determining scores and ratings pursuant to Subpart 30-2 instead of the grades three through eight English language arts and mathematics state assessments and/or any state growth model until the entry into a successor collective bargaining agreement.

A new Subpart 30-3 is added to implement the amended evaluation law. Where practicable, existing requirements for teacher and principal evaluations are carried over in their entirety. Below is a description of the areas where substantive changes from existing requirements have been made to implement the provisions of Chapter 59 of the Laws of 2019.

Section 30-3.1 clarifies that the new evaluation system only applies to CBAs entered into after April 12, 2019. It further clarifies that nothing in the new Subpart shall be construed to abrogate any conflicting provisions of any CBA in effect on and after April 12, 2019 during the term of such agreement and until entry into a successor CBA; provided further, however, that any assessments used in determining transition scores and ratings shall be used in determining scores and ratings pursuant to Subpart 30-2 instead of the grades three through eight English language arts and mathematics state assessments and/or any state growth model until the entry into a successor collective bargaining agreement. As required by the Education Law, it further clarifies that APPRs shall be a significant factor for employment decisions and teacher and principal development, consistent with the requirements of the law. It also clarifies the unfettered right to terminate a probationary teacher or principal for any statutorily and constitutionally permissible reason.

Section 30-3.4 describes the standards and criteria for conducting APPRs of classroom teachers under the amended law. The law requires teachers to be evaluated based on two categories: the student performance category and the teacher observation category.

Section 30-3.5 describes the standards and criteria for conducting AP-

PRs of building principals under the amended law. The law requires the Commissioner to establish a principal evaluation system that is aligned to the teacher evaluation system set forth in Education Law § 3012-d. To implement the law, the proposed amendment requires building principals to be evaluated based on two categories: the student performance category and the school visit category.

Section 30-3.16 describes a process which permits a district or BOCES to apply for a variance from one or more of the provisions of this Subpart to meet specific needs and circumstances of the district or BOCES so long as such plan remains consistent with the requirements of Education Law § 3012-d.

Section 30-3.17 provides for the severability of each section of this Subpart.

### 3. COSTS:

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

### 4. MINIMIZING ADVERSE IMPACT:

The Department is required by Education Law 3012-d to develop uniform standards for Annual Professional Performance Review plans across the State. Therefore, no alternatives were considered for those located in rural areas of the State.

### 5. RURAL AREA PARTICIPATION:

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

### Job Impact Statement

The purpose of the proposed amendments to §§ 30-2 and 30-3 of the Rules of the Board of Regents is to update Annual Professional Performance Review (APPR) requirements for school districts and BOCES. Under existing regulations, school districts and BOCES are required to develop Annual Professional Performance Review plans. The purpose of these plans is to improve the quality of teaching and learning by ensuring that teachers and school leaders receive annual evaluations consistent with the State's Teaching and Leadership Standards leading to opportunities for professional growth and to meet the learning needs of their students.

The Department is proposing to revise the requirements for APPR plans to ensure that these regulations are consistent with statutory amendments to Education Law 3012-d pursuant to Chapter 59 of the Laws of 2019. The Department is also repealing and replacing certain regulations related to APPR plans for teachers and school leaders only relevant to Education Law 3012-c, which is only applicable to APPRs conducted prior to the 2016-17 school year.

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

### Assessment of Public Comment

The agency received no public comment.

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

### Restricted License for Clinical Laboratory Technologist

**I.D. No.** EDU-52-19-00008-EP

**Filing No.** 1136

**Filing Date:** 2019-12-10

**Effective Date:** 2019-12-28

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

**Proposed Action:** Amendment of section 79-13.5 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207, 6504, 6506, 6507, 8610; L. 2019, ch. 227

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

**Specific reasons underlying the finding of necessity:** The proposed amendment to section 79-13.5 of the Regulations of the Commissioner of Education is necessary to implement Chapter 227 (Chapter 227) of the Laws of 2019, which amended the Education Law, effective December 28, 2019, which establishes a new restricted license for clinical laboratory technologists in toxicology and allows individuals employed by a New York State Department of Health certified laboratory who meet the requirements for a restricted license to receive a certification allowing them to perform toxicology laboratory services.

The proposed amendment to section 79-13.5 of the Regulations of the

Commissioner of Education implements Chapter 227 by adding toxicology to the category of restricted licenses for clinical laboratory technologists, establishing education requirements that must be provided by the Clinical Director to those applicants for a restricted license in toxicology and establishing a pathway to licensure for individuals who are employed by a New York State Department of Health authorized toxicology laboratory, operating under the direction of a clinical laboratory director to receive a certification allowing them to perform toxicology laboratory services.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for permanent adoption, after expiration of the required 60-day comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the April 2020 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at April meeting would be April 22, 2020, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the December 2019 meeting for the preservation of the public health and general welfare in order to immediately conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to the requirements of Chapter 227, which becomes effective December 28, 2019 and to ensure that procedures and standards are in place to license individuals by the effective date of the statutory licensure requirement for a restricted license for clinical laboratory technologists in toxicology, thereby enabling such practitioners to be licensed in a timely manner to meet the health care needs of the residents of New York State.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the April 2020 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings. However, since the emergency regulation will expire before the April Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the March 2020 Regents meeting.

**Subject:** Restricted License for Clinical Laboratory Technologist.

**Purpose:** Implement chapter 227 of the Laws of 2019 by adding toxicology to the category of restricted licenses for clinical laboratory technologists.

**Text of emergency/proposed rule:** Section 79-13.5 of the Regulations of the Commissioner of Education is amended, as follows:

§ 79-13.5. Restricted license.

(a) In accordance with section 8610(1) of the Education Law, the department may issue a restricted clinical laboratory license to perform certain examinations and procedures within the definition of clinical laboratory technology as set forth in section 8601(1) of the Education Law, provided that such a restricted licensee may only perform examinations and procedures in those of the following areas which are specifically listed in his or her certificate: histocompatibility, cytogenetics, stem cell process, flow cytometry/cellular immunology and molecular diagnosis to the extent such molecular diagnosis is included in genetic testing-molecular and molecular oncology, and toxicology as provided in subdivision (b-1) of this section.

(b) ....

(b-1) Only individuals employed in a New York State Department of Health authorized toxicology laboratory, operating under the direction of a clinical laboratory director, may obtain a certificate in toxicology.

(c) In addition to the requirements set forth in section 8610(1) of the Education Law, to qualify for a restricted license, an applicant shall satisfy the following requirements:

(1) ....

(2) ....

(i) ....

(ii) ....

(iii) ....

(iv) ....

(v) The training program shall include the following curricula for certificates issued in each of the following areas:

(a) ....

(b) ....

(c) ....

(d) ....

(e) ....

(f) ....

(g) For a certificate in the area of toxicology, the training program shall include knowledge of laboratory methods in toxicology, including qualitative and quantitative determination of xenobiotics present in biological specimens. The training program shall also include, but need not be limited to, general laboratory principles and skills; basic principles of chemistry, biology, and the physical sciences; basic principles

of pharmacology; basic principles of purification, separation, and extraction techniques; instrumentation and equipment; quality control and quality assurance; laboratory mathematics; the principles of immunoassay techniques; preparation and processing of biological specimens for toxicological analysis; the principles of analytical techniques; review and certification of toxicology results; aseptic technique and infection control and specific clinical applications.

(3) ....

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 8, 2020.

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

**Data, views or arguments may be submitted to:** Erin Morigerato, Education Department, Office of the Professions, 89 Washington Avenue, 2nd Floor EB, West Wing, Albany, NY 12234, (518) 486-1727, email: REGCOMMENTS@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:

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

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

Section 6506 of the Education Law authorizes the Board of Regents to supervise the admission to and 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.

Section 8610 of the Education Law, as amended by Chapter 227 of the laws of 2019, establishes a new restricted license for clinical laboratory technologists in toxicology and allows individuals employed by a New York State Department of Health certified laboratory, who meet the requirements for a restricted license, to receive a certification allowing them to perform toxicology laboratory services.

##### 2. LEGISLATIVE OBJECTIVES:

The proposed amendment to section 79-13.5 of the Regulations of the Commissioner of Education is consistent with the above statutory authority and implements Chapter 227 of the Laws of 2019 (Chapter 227) adding toxicology to the category of restricted licenses for clinical laboratory technologists, establishing education requirements that must be provided by the Clinical Director to those applicants for a restricted license in toxicology and establishing a pathway to licensure for individuals who are employed by a New York State Department of Health authorized toxicology laboratory, operating under the direction of a clinical laboratory director to receive a certification allowing them to perform toxicology laboratory services.

##### 3. NEEDS AND BENEFITS:

The proposed amendment implements Chapter 227, which, effective December 28, 2019, inter alia, amended the Education Law by creating a new restricted license for clinical laboratory technologists in toxicology and allows individuals employed by a New York State Department of Health certified laboratory, who meet the requirements for a restricted license, to receive a certification allowing them to perform toxicology laboratory services.

New York State based clinical toxicology laboratories that hold a permit from the NYS Department of Health's Clinical Laboratory Evaluation Program to provide the services and activities to test and process specimens are required to employ individuals holding valid licenses in clinical laboratory technology (CLT), or certified clinical laboratory technician (CCLT), working under supervision. Currently, in order to obtain a CLT license, an individual must complete a bachelor degree or higher in clinical laboratory technology or an advanced certificate from a program in clinical laboratory technology, or an associate's degree in clinical laboratory technician and then successfully complete a comprehensive qualifying exam in accordance with Education Law § 8605 and § 8606 and Commissioner's Regulations.

Toxicology laboratory volume is at an historic high, since among other matters, the services have become a useful tool in combating the opioid addiction epidemic, as well as assisting in identifying adverse effects of chemical substances in people and establishing the correct dosage of medications in patients. Laboratory results can indicate an individual's adherence to established protocols and important behavioral health outcomes.

Laboratories have had great difficulty in filling available staffing positions, in part due to the shortage of licensed personnel in many of the laboratories in New York State. As a result, laboratory tests are sent out of state where they are performed by individuals over whom New York State has no licensing authority of laboratory personnel, although the laboratories are issued a permit by NYSDOH. This is a process that delays the reception of test results. Without creating a pathway to licensure for individuals who are qualified to perform the necessary toxicology laboratory services and activities by establishing a new restricted license, New York State will be further constrained in accessing in-state toxicology laboratory services.

A restricted license in five specific tests and procedures was first established in 2008 by an amendment to Article 165 of the Education Law near the outset of licensure since these specific tests and procedures were often not yet included in the registered programs for clinical laboratory technology and the restricted license enabled laboratories to provide the tests and procedures. The inclusion of toxicology among the restricted licenses in clinical laboratory technology will alleviate the high demand for these services while ensuring appropriate education and supervision. The proposed amendment to section 79-13.5 of the Regulations of the Commissioner of Education implements Chapter 227 by amending 79-13.5 (a) to add toxicology to the category of restricted licenses for clinical laboratory technologists, adding a new subdivision (g) establishing education requirements that must be provided by the Clinical Director to those applicants for a restricted license in toxicology and adding a new subdivision (b-1) to establish a pathway to licensure for individuals who are employed by a New York State Department of Health authorized toxicology laboratory, operating under the direction of a clinical laboratory director to receive a certification allowing them to perform toxicology laboratory services.

The proposed amendment conforms section 79-13.5 of the Regulations of the Commissioner of Education to the amendment made to Education Law § 8610 of the Education Law by Chapter 227.

#### 4. COSTS:

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

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

(c) Cost to private regulated parties: The proposed amendment does not impose any additional costs on regulated parties.

(d) Cost 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:

There are no new forms, reporting requirements, or other recordkeeping associated with the proposed amendment.

#### 7. DUPLICATION:

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

#### 8. ALTERNATIVES:

The proposed amendment conforms section 79-13.5 of the Regulations of the Commissioner of Education to the amendment made to Education Law § 8610 of the Education Law by Chapter 227. There are no significant alternatives to the proposed amendment and none were considered.

#### 9. FEDERAL STANDARDS:

No Federal standards apply to the subject matter of this rule making. Since there are no applicable federal standards, the proposed amendment does not exceed any minimum federal standards for the same or similar subject areas.

#### 10. COMPLIANCE SCHEDULE:

If adopted at the April 2020 Regents meeting, the proposed amendment will become effective on April 22, 2020. It is anticipated that regulated parties will be able to comply with the proposed amendment by the effective date.

#### *Regulatory Flexibility Analysis*

The purpose of the proposed amendment conforms section 79-13.5 of the Regulations of the Commissioner of to the amendment made to Education Law § 8610 by Chapter 227 (Chapter 227) of the Laws of 2019. Effective December 28, 2019, Chapter 227 amended the Education Law by creating a new restricted license for clinical laboratory technologists in toxicology and allows individuals employed by a New York State Department of Health certified laboratory, who meet the requirements for a restricted license, to receive a certification allowing them to perform toxicology laboratory services.

New York State based clinical toxicology laboratories that hold a permit from the NYS Department of Health's Clinical Laboratory Evaluation Program to provide the services and activities to test and process specimens are required to employ individuals holding valid licenses in

clinical laboratory technology (CLT), or certified clinical laboratory technician (CCLT), working under supervision. Currently, in order to obtain a CLT license, an individual must complete a bachelor degree or higher in clinical laboratory technology or an advanced certificate from a program in clinical laboratory technology, or an associate's degree in clinical laboratory technician and then successfully complete a comprehensive qualifying exam in accordance with Education Law § 8605 and § 8606 and Commissioner's Regulations.

Toxicology laboratory volume is at an historic high, since among other matters, the services have become a useful tool in combating the opioid addiction epidemic, as well as assisting in identifying adverse effects of chemical substances in people and establishing the correct dosage of medications in patients. Laboratory results can indicate an individual's adherence to established protocols and important behavioral health outcomes. Laboratories have had great difficulty in filling available staffing positions, in part due to the shortage of licensed personnel in many of the laboratories in New York State. As a result, laboratory tests are sent out of state where they are performed by individuals over whom New York State has no licensing authority of laboratory personnel, although the laboratories are issued a permit by NYSDOH. This is a process that delays the reception of test results. Without creating a pathway to licensure for individuals who are qualified to perform the necessary toxicology laboratory services and activities by establishing a new restricted license, New York State will be further constrained in accessing in-state toxicology laboratory services.

A restricted license in five specific tests and procedures was first established in 2008 by an amendment to Article 165 of the Education Law near the outset of licensure since these specific tests and procedures were often not yet included in the registered programs for clinical laboratory technology and the restricted license enabled laboratories to provide the tests and procedures. The inclusion of toxicology among the restricted licenses in clinical laboratory technology will alleviate the high demand for these services while ensuring appropriate education and supervision. The proposed amendment to section 79-13.5 of the Regulations of the Commissioner of Education implements Chapter 227 by amending 79-13.5 (a) to add toxicology to the category of restricted licenses for clinical laboratory technologists, adding a new subdivision (g) establishing education requirements that must be provided by the Clinical Director to those applicants for a restricted license in toxicology and adding a new subdivision (b-1) to establish a pathway to licensure for individuals who are employed by a New York State Department of Health authorized toxicology laboratory, operating under the direction of a clinical laboratory director to receive a certification allowing them to perform toxicology laboratory services.

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

#### *Rural Area Flexibility Analysis*

The purpose of the proposed amendment conforms section 79-13.5 of the Regulations of the Commissioner of to the amendment made to Education Law § 8610 by Chapter 227 (Chapter 227) of the Laws of 2019. Effective December 28, 2019, Chapter 227 amended the Education Law by creating a new restricted license for clinical laboratory technologists in toxicology and allows individuals employed by a New York State Department of Health certified laboratory, who meet the requirements for a restricted license, to receive a certification allowing them to perform toxicology laboratory services.

New York State based clinical toxicology laboratories that hold a permit from the NYS Department of Health's Clinical Laboratory Evaluation Program to provide the services and activities to test and process specimens are required to employ individuals holding valid licenses in clinical laboratory technology (CLT), or certified clinical laboratory technician (CCLT), working under supervision. Currently, in order to obtain a CLT license, an individual must complete a bachelor's degree or higher in clinical laboratory technology or an advanced certificate from a program in clinical laboratory technology, or an associate degree in clinical laboratory technician and then successfully complete a comprehensive qualifying exam in accordance with Education Law § 8605 and § 8606 and Commissioner's Regulations.

Toxicology laboratory volume is at an historic high, since among other matters, the services have become a useful tool in combating the opioid addiction epidemic, as well as assisting in identifying adverse effects of chemical substances in people and establishing the correct dosage of medications in patients. Laboratory results can indicate an individual's adherence to established protocols and important behavioral health outcomes.

Laboratories have had great difficulty in filling available staffing positions, in part due to the shortage of licensed personnel in many of the laboratories in New York State. As a result, laboratory tests are sent out of state where they are performed by individuals over whom New York State has no licensing authority of laboratory personnel, although the laboratories are issued a permit by NYSDOH. This is a process that delays the reception of test results. Without creating a pathway to licensure for individuals who are qualified to perform the necessary toxicology laboratory services and activities by establishing a new restricted license, New York State will be further constrained in accessing in-state toxicology laboratory services.

A restricted license in five specific tests and procedures was first established in 2008 by an amendment to Article 165 of the Education Law near the outset of licensure since these specific tests and procedures were often not yet included in the registered programs for clinical laboratory technology and the restricted license enabled laboratories to provide the tests and procedures. The inclusion of toxicology among the restricted licenses in clinical laboratory technology will alleviate the high demand for these services while ensuring appropriate education and supervision. The proposed amendment to section 79-13.5 of the Regulations of the Commissioner of Education implements Chapter 227 by amending 79-13.5 (a) to add toxicology to the category of restricted licenses for clinical laboratory technologists, adding a new subdivision (g) establishing education requirements that must be provided by the Clinical Director to those applicants for a restricted license in toxicology and adding a new subdivision (b-1) to establish a pathway to licensure for individuals who are employed by a New York State Department of Health authorized toxicology laboratory, operating under the direction of a clinical laboratory director to receive a certification allowing them to perform toxicology laboratory services.

The proposed amendment is applicable to all applicants for licensure, including those in rural areas of this State. Thus, the proposed amendment does not adversely impact entities in rural areas of New York State. Accordingly, no further steps were needed to ascertain the impact of the proposed amendment on entities in rural areas and none were taken. Thus, a rural flexibility analysis is not required and one has not been prepared.

#### **Job Impact Statement**

It is not anticipated that the proposed amendment will impact jobs or employment opportunities. This is because the proposed amendment conforms section 79-13.5 of the Regulations of the Commissioner of Education to the amendment made to Education Law § 8610 by Chapter 227 (Chapter 227) of the Laws of 2019. Effective December 28, 2019, Chapter 227 amended the Education Law by creating a new restricted license for clinical laboratory technologists in toxicology and allows individuals employed by a New York State Department of Health certified laboratory, who meet the requirements for a restricted license, to receive a certification allowing them to perform toxicology laboratory services.

New York State based clinical toxicology laboratories that hold a permit from the NYS Department of Health's Clinical Laboratory Evaluation Program to provide the services and activities to test and process specimens are required to employ individuals holding valid licenses in clinical laboratory technology (CLT), or certified clinical laboratory technician (CCLT), working under supervision. Currently, in order to obtain a CLT license, an individual must complete a bachelor degree or higher in clinical laboratory technology or an advanced certificate from a program in clinical laboratory technology, or an associate's degree in clinical laboratory technician and then successfully complete a comprehensive qualifying exam in accordance with Education Law § 8605 and § 8606 and Commissioner's Regulations.

Toxicology laboratory volume is at an historic high, since among other matters, the services have become a useful tool in combating the opioid addiction epidemic, as well as assisting in identifying adverse effects of chemical substances in people and establishing the correct dosage of medications in patients. Laboratory results can indicate an individual's adherence to established protocols and important behavioral health outcomes. Laboratories have had great difficulty in filling available staffing positions, in part due to the shortage of licensed personnel in many of the laboratories in New York State. As a result, laboratory tests are sent out of state where they are performed by individuals over whom New York State has no licensing authority of laboratory personnel, although the laboratories are issued a permit by NYSDOH. This is a process that delays the reception of test results. Without creating a pathway to licensure for individuals who are qualified to perform the necessary toxicology laboratory services and activities by establishing a new restricted license, New York State will be further constrained in accessing in-state toxicology laboratory services.

A restricted license in five specific tests and procedures was first established in 2008 by an amendment to Article 165 of the Education Law near the outset of licensure since these specific tests and procedures were often not yet included in the registered programs for clinical laboratory

technology and the restricted license enabled laboratories to provide the tests and procedures. The inclusion of toxicology among the restricted licenses in clinical laboratory technology will alleviate the high demand for these services while ensuring appropriate education and supervision. The proposed amendment to section 79-13.5 of the Regulations of the Commissioner of Education implements Chapter 227 by amending 79-13.5 (a) to add toxicology to the category of restricted licenses for clinical laboratory technologists, adding a new subdivision (g) establishing education requirements that must be provided by the Clinical Director to those applicants for a restricted license in toxicology and adding a new subdivision (b-1) to establish a pathway to licensure for individuals who are employed by a New York State Department of Health authorized toxicology laboratory, operating under the direction of a clinical laboratory director to receive a certification allowing them to perform toxicology laboratory services.

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 have no impact on jobs or employment opportunities attributable to its adoption or only a positive impact, 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/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED**

#### **Continuing Education in the Profession of Public Accountancy**

**I.D. No.** EDU-52-19-00009-EP

**Filing No.** 1137

**Filing Date:** 2019-12-10

**Effective Date:** 2020-01-01

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

**Proposed Action:** Amendment of section 70.9(a) of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207, 6504, 6507, 6509, 7401, 7409; L. 2018, ch. 413

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

**Specific reasons underlying the finding of necessity:** The proposed amendment to subdivision (a) of section 70.9 of the Regulations of the Commissioner of Education is necessary to implement Chapter 413 (Chapter 413) of the Laws of 2018, which amends the Education Law, effective January 1, 2020, to eliminate the three-year exemption from the mandatory continuing education requirement for newly licensed certified public accountants and public accountants.<sup>1</sup>

The proposed amendment to subdivision (a) of section 70.9 of the Regulations of the Commissioner of Education implements Chapter 413 by deleting the three-year exemption from the mandatory continuing education requirement provisions for newly licensed certified public accountants.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for permanent adoption, after expiration of the required 60-day comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the April 2020 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at April meeting would be April 22, 2020, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the December 2019 meeting for the preservation of the general welfare in order to immediately conform the Regulations of the Commissioner of Education to the requirements of Chapter 413, which becomes effective January 1, 2020.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the April 2020 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings. However, since the emergency regulation will expire before the April Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the March 2020 Regents meeting.

<sup>1</sup> It should be noted that New York State no longer issues licenses for public accountants. In fact, no new public accountant licenses have been issued in this State in nearly sixty years. Thus, while Chapter 413's elimination of the three-year exemption from the mandatory continuing

education requirement applies to both newly licensed certified public accountants and public accountants, there will be no newly licensed public accountants to apply it to.

**Subject:** Continuing Education in the Profession of Public Accountancy.

**Purpose:** Implement the provisions of chapter 413 of the Laws of 2018.

**Text of emergency/proposed rule:** Subdivision (a) of section 70.9 of the Regulations of the Commissioner of Education is amended, as follows:

Section 70.9. Continuing education

(a) Applicability of requirement.

(1) All licensees engaged in the practice of public accountancy in this State, as defined in Education Law section 7401, either full time or part time, and required under article 130 of the Education Law to register triennially with the Department, shall complete the continuing education requirements in accordance with this section, except those licensees exempt from the requirement pursuant to paragraph (2) of this subdivision.

(2) Exemptions and adjustments in the requirement.

(i) [New licensees shall be exempt from mandatory continuing education requirements for the triennial registration period in which they are first licensed by the Department.] A new licensee shall become subject to the mandatory continuing education requirements on the first January 1 that falls in his or her [second] *first* registration period.

**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 March 8, 2020.

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

**Data, views or arguments may be submitted to:** Victoria Hay, Education Department, Office of the Professions, 89 Washington Avenue, 2nd Floor EB, West Wing, Albany, NY 12234, (518) 486-1727, email: REGCOMMENTS@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:

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

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

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

Section 6509 of the Education Law authorizes the Board of Regents to promulgate rules regarding professional misconduct in certain professions.

Section 7401 of the Education Law defines the profession of public accountancy.

Section 7409 of the Education Law, as amended by Chapter 413 of the Laws of 2018, effective January 1, 2020, amends the Education Law to eliminate the three-year exemption from the mandatory continuing education requirement for newly licensed certified public accountants and public accountants.<sup>1</sup>

##### 2. LEGISLATIVE OBJECTIVES:

The proposed amendment to subdivision (a) of section 70.9 of the Regulations of the Commissioner of Education is consistent with the above statutory authority and is necessary to implement Chapter 413 by deleting the three-year exemption from the mandatory continuing education requirement provisions for newly licensed certified public accountants.

##### 3. NEEDS AND BENEFITS:

The proposed amendment implements Chapter 413 (Chapter 413) of the Laws of 2019, which, effective January 1, 2020, amends the Education Law by eliminating the three-year exemption from the mandatory continuing education requirement for newly licensed certified public accountants and public accountants.

Currently, certified public accountants are exempt from the mandatory continuing education requirement for the triennial registration period during which they are first licensed by the Department. However, as the pace of technology, proliferation of regulations and increasing specialization accelerates; one of the greatest challenges for all certified public accountants is the attainment, maintenance and advancement of professional competence. To meet this challenge and to maintain public confidence, it is critical that all certified public accountants are and remain current with the standards, knowledge, skills, and abilities in all areas in which they provide services. It is not enough that an individual is successful in completing an accountancy education and passing a licensing examination.

In today's complexed and complicated world, all certified public accountants need to demonstrate that they are taking substantive steps to maintain their professional competency. Unprofessional and/or unethical practice of public accountancy causes harm to the public. Thus, by eliminating the three-year exemption from the mandatory continuing education requirement for newly licensed certified public accountants, Chapter 413 will further increase public protection in the profession of public accountancy.

The proposed amendment conforms subdivision (a) of section 70.9 of the Regulations of the Commissioner of Education to the amendment made to section 7409 of the Education Law by Chapter 413.

##### 4. COSTS:

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

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

(c) Cost to private regulated parties: The proposed amendment does not impose any additional costs on private regulated parties beyond those required by statute. As required by Education Law section 7409(5) and paragraph (1) of subdivision (h) of section 70.9 of the Regulations of the Commissioner of Education, a mandatory continuing education fee of \$50 shall be collected from any licensee who is required under Article 130 of the Education Law to register triennially with the Department at the beginning of each triennial registration period.

(d) Cost 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:

There are no new forms, reporting requirements, or other recordkeeping associated with the proposed amendment.

##### 7. DUPLICATION:

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

##### 8. ALTERNATIVES:

The proposed amendment conforms subdivision (a) of section 70.9 of the Regulations of the Commissioner of Education implements Chapter 413 by deleting the three-year exemption from the mandatory continuing education requirement provisions for newly licensed certified public accountants. There are no significant alternatives to the proposed amendment and none were considered.

##### 9. FEDERAL STANDARDS:

No Federal standards apply to the subject matter of this rule making. The Federal government does not regulate the mandatory continuing education requirements for licensed certified public accountants.

##### 10. COMPLIANCE SCHEDULE:

If adopted at the December 2019 Regents meeting, the emergency rule will become effective January 1, 2020. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the April 2020 Regents meeting. If adopted at the April 2020 Regents meeting, the proposed amendment will become effective on April 22, 2020. It is anticipated that regulated parties will be able to comply with the proposed amendment by the effective date.

<sup>1</sup> It should be noted that New York State no longer issues licenses for public accountants. In fact, no new public accountant licenses have been issued in this State in nearly sixty years. Thus, while Chapter 413's elimination of the three-year exemption from the mandatory continuing education requirement applies to both newly licensed certified public accountants and public accountants, there will be no newly licensed public accountants to apply it to.

#### Regulatory Flexibility Analysis

The purpose of the proposed amendment to subdivision (a) of section 70.9 of the Regulations of the Commissioner of Education is to conform the regulation to the amendment made to section 7409 of the Education Law by Chapter 413 (Chapter 413) of the Laws of 2018. Effective January 1, 2020, Chapter 413 amends the Education Law by eliminating the three-year exemption from the mandatory continuing education requirement for newly licensed certified public accountants and public accountants.<sup>1</sup>

Currently, certified public accountants are exempt from the mandatory continuing education requirement for the triennial registration period during which they are first licensed by the Department. However, as the pace of technology, proliferation of regulations and increasing specialization accelerates; one of the greatest challenges for all certified public accountants is the attainment, maintenance and advancement of professional competence. To meet this challenge and to maintain public confidence, it is critical that all certified public accountants are and remain current with the standards, knowledge, skills, and abilities in all areas in which they

provide services. It is not enough that an individual is successful in completing an accountancy education and passing a licensing examination. In today's complexed and complicated world, all certified public accountants need to demonstrate that they are taking substantive steps to maintain their professional competency. Unprofessional and/or unethical practice of public accountancy causes harm to the public. Thus, by eliminating the three-year exemption from the mandatory continuing education requirement for newly licensed certified public accountants, Chapter 413 will further increase public protection in the profession of public accountancy.

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

<sup>1</sup> It should be noted that New York State no longer issues licenses for public accountants. In fact, no new public accountant licenses have been issued in this State in nearly sixty years. Thus, while Chapter 413's elimination of the three-year exemption from the mandatory continuing education requirement applies to both newly licensed certified public accountants and public accountants, there will be no newly licensed public accountants to apply it to.

**Rural Area Flexibility Analysis**

The purpose of the proposed amendment to subdivision (a) of section 70.9 of the Regulations of the Commissioner of Education is to conform the regulation to the amendment made to section 7409 of the Education Law by Chapter 413 (Chapter 413) of the Laws of 2018. Effective January 1, 2020, Chapter 413 amends the Education Law by eliminating the three-year exemption from the mandatory continuing education requirement for newly licensed certified public accountants and public accountants.<sup>1</sup>

Currently, certified public accountants are exempt from the mandatory continuing education requirement for the triennial registration period during which they are first licensed by the Department. However, as the pace of technology, proliferation of regulations and increasing specialization accelerates; one of the greatest challenges for all certified public accountants is the attainment, maintenance and advancement of professional competence. To meet this challenge and to maintain public confidence, it is critical that all certified public accountants are and remain current with the standards, knowledge, skills, and abilities in all areas in which they provide services. It is not enough that an individual is successful in completing an accountancy education and passing a licensing examination. In today's complexed and complicated world, all certified public accountants need to demonstrate that they are taking substantive steps to maintain their professional competency. Unprofessional and/or unethical practice of public accountancy causes harm to the public. Thus, by eliminating the three-year exemption from the mandatory continuing education requirement for newly licensed certified public accountants, Chapter 413 will further increase public protection in the profession of public accountancy.

The proposed amendment eliminating the three-year exemption from the mandatory continuing education requirement for newly licensed certified public accountants and public accountants is applicable to all new licensees in this profession, including those in rural areas of this State. Thus, the proposed amendment does not adversely impact entities in rural areas of New York State. Accordingly, no further steps were needed to ascertain the impact of the proposed amendment on entities in rural areas and none were taken. Thus, a rural flexibility analysis is not required and one has not been prepared.

<sup>1</sup> It should be noted that New York State no longer issues licenses for public accountants. In fact, no new public accountant licenses have been issued in this State in nearly sixty years. Thus, while Chapter 413's elimination of the three-year exemption from the mandatory continuing education requirement applies to both newly licensed certified public accountants and public accountants, there will be no newly licensed public accountants to apply it to.

**Job Impact Statement**

It is not anticipated that the proposed amendment will impact jobs or employment opportunities. This is because the proposed amendment conforms subdivision (a) of section 70.9 of the Regulations of the Commissioner of Education to the amendment made to section 7409 of the Education Law by Chapter 413 (Chapter 413) of the Laws of 2018. Effective January 1, 2020, Chapter 413 amends the Education Law by eliminating the three-year exemption from the mandatory continuing education

requirement for newly licensed certified public accountants and public accountants.<sup>1</sup>

Currently, certified public accountants are exempt from the mandatory continuing education requirement for the triennial registration period during which they are first licensed by the Department. However, as the pace of technology, proliferation of regulations and increasing specialization accelerates; one of the greatest challenges for all certified public accountants is the attainment, maintenance and advancement of professional competence. To meet this challenge and to maintain public confidence, it is critical that all certified public accountants are and remain current with the standards, knowledge, skills, and abilities in all areas in which they provide services. It is not enough that an individual is successful in completing an accountancy education and passing a licensing examination. In today's complexed and complicated world, all certified public accountants need to demonstrate that they are taking substantive steps to maintain their professional competency. Unprofessional and/or unethical practice of public accountancy causes harm to the public. Thus, by eliminating the three-year exemption from the mandatory continuing education requirement for newly licensed certified public accountants, Chapter 413 will further increase public protection in the profession of public accountancy.

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 have no impact on jobs or employment opportunities attributable to its adoption or only a positive impact, 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.

<sup>1</sup> It should be noted that New York State no longer issues licenses for public accountants. In fact, no new public accountant licenses have been issued in this State in nearly sixty years. Thus, while Chapter 413's elimination of the three-year exemption from the mandatory continuing education requirement applies to both newly licensed certified public accountants and public accountants, there will be no newly licensed public accountants to apply it to.

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

**Duties and Responsibilities of the Counsel of the State Education Department**

**I.D. No.** EDU-52-19-00010-EP

**Filing No.** 1138

**Filing Date:** 2019-12-10

**Effective Date:** 2020-01-06

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

**Proposed Action:** Amendment of section 3.8(b) of Title 8 NYCRR.

**Statutory authority:** Education Law, section 101(not subdivided)

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

**Specific reasons underlying the finding of necessity:** The proposed amendment is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the State Education Department since the position of executive deputy commissioner is currently vacant. The proposed amendment removes provisions relating to the executive deputy commissioner and designates the Counsel as the deputy commissioner of education as specified in Education Law section 101, who in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

Because the Board of Regents meets at fixed intervals, the earlier the proposed amendment could be adopted by regular (non-emergency) action, pursuant to the requirements of the State Administrative Procedure Act- including publication in the State Register and expiration of a 60-day public comment period, is the April 2020 Regents meeting, and the earliest an adoption at such meeting could be made effective would be April 22, 2020.

The recommended action is being proposed as an emergency measure because such action is necessary for the preservation of the general welfare in order to ensure that the Rules of the Board of Regents are immediately brought into conformance with changes in the Department's internal organization, so as to ensure that the Counsel is able to immediately carry out

her duties and responsibilities relating to the Counsel's designation as the deputy commissioner of education under Education Law section 101, including the ability to exercise and perform the functions, powers and duties of the Commissioner in his or her absence or disability, or if a vacancy exists in the office of the Commissioner.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the April 2020 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by the State Administrative Procedure Act. However, since the emergency regulation will expire before the April 2020 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the March 2020 Regents meeting.

**Subject:** Duties and responsibilities of the counsel of the State Education Department.

**Purpose:** To designate counsel as the deputy commissioner of education as specified in Education Law, section 101.

**Text of emergency/proposed rule:** Paragraph (b) of section 3.8 of the Rules of the Board of Regents is amended to read as follows:

(b) The [executive deputy commissioner] *counsel* shall be the deputy commissioner of education as specified in section 101 of the Education Law. In the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, the [executive deputy commissioner] *counsel* shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by statute and by rule of the Regents.

**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 March 8, 2020.

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

**Data, views or arguments may be submitted to:** Julia Patane, Education Department, Office of Counsel, 89 Washington Avenue, Room 112 EB, Albany, NY 12234, (518) 474-6400, email: REGCOMMENTS@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 § 101 (not subdivided) designates the Board of Regents as the head of the State Education Department and the Commissioner of Education as Chief administrative officer. The statute provides that the Regents may also appoint and, at please, remove a deputy commissioner of education, who shall perform such duties as the Regents may assign by rule and who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties conferred or imposed on the Commissioner by the Education Law.

##### **2. LEGISLATIVE OBJECTIVES:**

Consistent with the authority granted to the Board of Regents pursuant to Education Law section 101, the proposed amendment designates the Counsel of the State Education Department as the deputy commissioner of education as specified in Education Law section 101: "...who shall perform such duties as the regents may assign to him by rule and who, in the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, shall exercise and perform the functions, power and duties conferred or imposed on the commissioner by this chapter."

##### **3. NEEDS AND BENEFITS:**

The propose amendment is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the State Education Department, regarding vacancy in the position of executive deputy commissioner. The amendment will designate the Counsel of the State Education Department as the deputy commissioner of education as specified in Education Law section 101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

##### **4. COSTS:**

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

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

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

d. Costs to regulating agency for implementation and continued administration: The amendments do not impose any costs on the regulating agency for implementation and continued administration.

##### **5. LOCAL GOVERNMENT MANDATES:**

The proposed amendment relates solely to the internal administration of the State Education Department and does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

##### **6. PAPERWORK:**

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

##### **7. DUPLICATION:**

The proposed amendment relates solely to the internal administration of the State Education Department. There are no relevant statutes, rules, or other legal requirements of the State and Federal governments, including those which may duplicate, overlap or conflict with the rule.

##### **8. ALTERNATIVES:**

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes in the internal organization of the State Education Department. There are no significant alternatives and none were considered.

##### **9. FEDERAL STANDARDS:**

There are no applicable standards of the Federal government for the subject are of the proposed amendment, which relates solely to the internal administration of the State Education Department.

##### **10. COMPLIANCE SCHEDULE:**

The proposed amendment relates solely to the internal administration of the State Education Department and does not impose any compliance requirements on any regulated parties.

#### **Regulatory Flexibility Analysis**

The proposed amendment relates solely to the internal organization of the State Education Department, regarding vacancy in the position of executive deputy commissioner and does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and non were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

#### **Rural Area Flexibility Analysis**

The proposed amendment relates solely to the internal organization of the State Education Department regarding vacancy in the position of executive deputy commissioner and does not impose any adverse economic impact, reporting, recordkeeping or other compliance in public and private sector interests in rural areas. Because it is evident from the nature of the proposed amendment that it does not affect such interests, no further steps were needed to ascertain that fact and non were taken. Accordingly, a rural flexibility is not required and one has not been prepared.

#### **Job Impact Statement**

The proposed amendment relates solely to the internal organization of the State Education Department regarding vacancy in the position of executive deputy commissioner and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that no substantial impact will occur, no further steps were needed to ascertain that fact and non were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

### **Extended Eligibility for Participation in Inclusive Athletic Activities**

**I.D. No.** EDU-39-19-00008-ERP

**Filing No.** 1139

**Filing Date:** 2019-12-10

**Effective Date:** 2019-12-10

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

**Action Taken:** Amendment of sections 135.1 and 135.4 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101, 207, 305, 803 and 3204

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

**Specific reasons underlying the finding of necessity:** As the term Unified Sports is a trademarked name, the proposed amendment to the regulation categorizes this program as “inclusive athletic activities.” The proposed amendment establishes a definition for inclusive athletic activities and establishes the eligibility rules applicable to participants in such inclusive athletic activities. It is important to note that nothing in the amendments alters the eligibility limitations contained within Commissioner’s regulation § 135.4(c)(7)(ii)(b)(1) for participation in traditional interscholastic athletic competition. The proposed rule is only applicable to students participating in inclusive athletic activities (i.e., the Unified Sports Program).

The proposed amendment establishes an exemption from the age and four-year limitation for students participating in inclusive athletic activities. A student who is enrolled in grades 9 through 12 and has not yet graduated from high school may continue to participate in inclusive athletic activities beyond the age of 19 and beyond four consecutive seasons of an inclusive athletic activity if the superintendent of schools or chief executive officer of the school or school system, as applicable, determines that the student meets the following criteria:

- Such student is a bona fide student of the high school for which the student wishes to participate in inclusive athletic activities and has not graduated from high school; and
- Such student is otherwise qualified to compete in the inclusive athletic activities for which he or she is applying for an exemption; and
- Such student has undergone an adequate health examination by the director of school health services, and the director of school health services has determined that the student’s participation in such activities will not present a safety or health concern for such student.

Emergency action is necessary at the December 2019 meeting for the preservation of the general welfare to permit students who are over the age of 19 but who have not yet graduated high school to immediately being participation in inclusive athletic activities for which such students wish to participate in.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the March 2020 Regents meeting, which is the first scheduled meeting after the 45-day public comment period prescribed in SAPA for State agency revised rule makings.

**Subject:** Extended Eligibility for Participation in Inclusive Athletic Activities.

**Purpose:** Establish a definition for inclusive athletic activities and establish rules applicable to participants in such activities.

**Text of emergency/revised rule:** 1. Subdivision (h) of section 135.1 of the Regulations of the Commissioner of Education is amended as follows:

(h) Extra class periods in physical education mean those sessions organized for instruction and practice in skills, attitudes and knowledge through participation in individual, group and team activities organized on an intramural, extramural [or], interschool athletic or inclusive athletic basis to supplement regular physical education class instruction.

2. Section 135.1 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (w), to read as follows:

(w) *Inclusive athletic activities mean those activities which provide competition between representatives of two or more schools and which combine students with and without disabilities on teams for the purpose of interscholastic play and which ensure proportional representation of students with and without disabilities.*

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

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

(1) Duration of competition. A pupil shall be eligible for senior high school athletic competition in a sport during each of four consecutive seasons of such sport commencing with the pupil’s entry into the ninth grade and prior to graduation, except as otherwise provided in this subclause, or except as authorized by a waiver granted under clause (d) of this subparagraph to a student with a disability, or as authorized for participation in inclusive athletic activities pursuant to clause (e) of this paragraph. If a board of education has adopted a policy, pursuant to subclause (a)(4) of this subparagraph, to permit pupils in the seventh and eighth grades to compete in senior high school athletic competition, such pupils shall be eligible for competition during five consecutive seasons of a sport commencing with the pupil’s entry into the eighth grade, or six

consecutive seasons of a sport commencing with the pupil’s entry into the seventh grade. A pupil enters competition in a given year when the pupil is a member of the team in the sport involved, and that team has completed at least one contest. A pupil shall be eligible for interschool competition in grades 9, 10, 11 and 12 until the last day of the school year in which he or she attains the age of 19, except as otherwise provided in subclause (a)(4) or clause (d) of this subparagraph, or in this subclause. The eligibility for competition of a pupil who has not attained the age of 19 years prior to July 1st may be extended under the following circumstances.

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

(2) Registration. A pupil shall be eligible for interschool competition or inclusive athletic activities in a sport during a semester, provided that he is a bona fide student, enrolled during the first 15 school days of such semester, is registered in the equivalent of three regular courses, is meeting the physical education requirement, and has been in regular attendance 80 percent of the school time, bona fide absence caused by personal illness excepted.

(3) Sports standards. Interschool athletic programs shall be planned so as to provide opportunities for pupils to participate in a sufficient variety of types of sports. *Inclusive athletic activities shall be planned so as to provide proportional representation of students with and without disabilities and meaningful participation.* “Sports standards, such as number of contests, length of seasons, time between contests, required practice days, etc., for all interschool sports shall conform to guidelines established by the Commissioner of Education.

(c) Male and female pupils on interschool athletic teams and inclusive athletic activities.

(1) Equal opportunity to participate in interschool competition and inclusive athletic activities, either on separate teams or in mixed competition on the same team, shall be provided to [make] male and female students, except as hereinafter provided. In schools that do not provide separate competition for male and female students in a specific sport, no student shall be excluded from such competition solely by reason of sex, except in accordance with the provisions of subclauses (2) and (4) of this clause. For the purposes of this clause, baseball and softball shall be considered to constitute a single sport.

(2) In the sports of baseball, basketball, boxing, field hockey, football, ice hockey, lacrosse, rugby, soccer, softball, speedball, team handball, power volleyball where the height of the net is set at less than eight feet, and wrestling, the fitness of a given student to participate in mixed competition shall be determined by a review panel consisting of the school physician, a physical education teacher designated by the principal of the school, and if requested by the parents of the pupil, a physician selected by such parents. Such panel shall make its determination by majority vote of the members, and in accordance with standards and criteria issued by the department.

(3) Where a school provides separate competition for male and female pupils in interschool athletic competition or inclusive athletic activities in a specific sport, the superintendent of schools, or in the case of a nonpublic school or school system which elects to be governed by this clause, the chief executive officer of the school or school system, may permit a female or females to participate on a team organized for males. However, where separate competition is provided, males may not participate on teams organized for females.

(4) Where a school does not provide separate competition for male and female pupils in interschool athletic competition or inclusive athletic activities in a specific sport, the superintendent of schools, or in the case of a nonpublic school or school system which elects to be governed by this clause, the chief executive officer of the school or school system, or the section may decline to permit a male or males to participate on a team organized for females upon a finding that such participation would have a significant adverse effect upon the opportunity of females to participate successfully in interschool competition or inclusive athletic activities in that sport.

3. Subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education shall be amended by adding a new clause (e) to read as follows:

(e) *Exemption from the age requirement and four-year limitation for inclusive athletic activities. A student who is enrolled in grades 9 through 12 and has not yet graduated from high school may be eligible to participate in inclusive athletic activities under the following limited conditions:*

(1) *such student may be granted an exemption to the age requirement and four-year limitation prescribed in subclause (b)(1) of this subparagraph. An exemption shall only be granted upon a determination by the superintendent of schools or chief executive officer of the school or school system, as applicable, that the given student meets the following criteria:*

(i) such student is a bona fide student of the high school for which the student wishes to participate in inclusive athletic activities and has not graduated from high school; and

(ii) such student is otherwise qualified to compete in the inclusive athletic activities for which he or she is applying for an exemption; and

(iii) such student has undergone an adequate health examination by the director of school health services, and the director of school health services has determined that the student's participation in such activities will not present a safety or health concern for such student; and

(2) Nothing in this clause shall permit the extension of eligibility for a student to participate in interschool athletic competition as defined in this section.

**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 September 25, 2019, I.D. No. EDU-39-19-00008-P. The emergency rule will expire March 8, 2020.

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

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

**Data, views or arguments may be submitted to:** Marybeth Casey, Director, Curriculum and Instruction, NYS Education Department, 89 Washington Avenue, 2M, Albany, NY 12234, (518) 474-0059, email: REGCOMMENTS@nysed.gov

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

#### Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making the *State Register* on September 25, 2019, one substantial revision was made to the proposed rule. The Department revised the proposed amendment to no longer require a student who wishes to participate in inclusive athletic activities to undergo a physical evaluation that includes an assessment of the student's level of physical development and maturity. The revision instead aligns this requirement with the health exam requirements for interschool athletic competition. Additionally, a technical correction was made by changing the term "interschool athletic activities" to "inclusive athletic activities" in Section 135.1(c)(7)(ii)(c)(4).

##### 1. STATUTORY AUTHORITY:

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

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

Education Law § 305 establishes the general powers and duties of the Commissioner of Education.

Education Law § 803 provides that all pupils above the age of eight years in all elementary and secondary schools shall receive physical education instruction under the direction of the Commissioner of Education as the regents may determine.

Education Law § 3204 provides that minors required to attend upon instruction pursuant to the Compulsory Education Law may attend at a public school or elsewhere and sets forth the requirements of such instruction.

##### 2. LEGISLATIVE OBJECTIVES:

Consistent with the above statutory authority, the proposed amendments to 135.1 and 135.4 of the Regulations of the Commissioner of Education establish a definition for inclusive athletic activities and to establish the eligibility rules applicable to participants in such inclusive athletic activities.

##### 3. NEEDS AND BENEFITS:

Commissioner's Regulation § 135.4(c)(7)(ii) establishes the parameters for participation in interscholastic athletic competition for students in grades 7 through 12. The underlying spirit of Commissioner's regulations governing interscholastic athletics is to provide for the safety and equal opportunity for participation for public school students. These principles guide athletic eligibility determinations for all student athletes who wish to participate in interscholastic athletic competition.

Recently, the New York State Public High School Athletic Association (NYSPHSAA) and the Special Olympics New York organized a Unified Sports program available to all NYSPHSAA member schools. The Unified Sports Program provides for students with and without disabilities to participate on such teams for the purpose of training and competition. According to NYSPHSAA "[p]articipation is rooted in the principle of meaningful involvement which ensures that every player is given an op-

portunity to contribute to the success of his or her team through their unique skills. Inclusive activity is among the most conducive ways to break down stereotypes and foster relationships...."

This unique program which offers opportunities for participation in athletic competition, was not specifically contemplated in the regulations that establish the eligibility rules generally applicable to student athletes. NYSPHSAA has therefore been applying the duration of competition rule contained within Commissioner's regulation § 135.4(c)(7)(ii)(b)(1) and applicable to traditional interscholastic athletics to inclusive athletic activities. Generally, the regulation limits eligibility for senior high school athletic competition in a sport during each of four consecutive seasons of such sport, commencing with the pupil's entry into ninth grade and prior to graduation, and until the last day of the school year in which he or she attains the age of 19.

Because the Unified Sports program is designed with participation and inclusivity in mind, applying the existing duration of competition rule curtails a student's participation to four years and before attaining the age of 19. These current eligibility requirements are not aligned with the intent of the inclusive athletics program. There are a number of students who continue school beyond the age of athletic eligibility, most particularly students with disabilities, who often remain in school until age 21.

Since this program has increased in popularity, NYSPHSAA and Special Olympics New York, along with numerous other constituents, have approached the Department to allow students an extended time to participate in the Unified Sports program, as long as they continue to be eligible to attend school and such participation would not pose a safety risk.

##### 4. COSTS:

Cost to the State: No additional costs are imposed on the State.

Costs to local government: No additional costs are imposed on local governments.

Cost to private regulated parties: No additional costs are imposed on regulated private parties.

Cost to regulating agency for implementation and continued administration of this rule: No additional costs are imposed on the State Education Department.

##### 5. LOCAL GOVERNMENT MANDATES:

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

##### 6. PAPERWORK:

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

##### 7. DUPLICATION:

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

##### 8. ALTERNATIVES:

The proposed amendment is necessary to establish a definition for inclusive athletic activities and to establish eligibility rules applicable to participants in such inclusive athletic activities. There were no significant alternatives and none were considered.

##### 9. FEDERAL STANDARDS:

There are no applicable Federal standards.

##### 10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the January 2020 Regents meeting, after publication of the proposed amendment in the *State Register* and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the January 2020 meeting, the proposed amendment will become effective on January 29, 2020.

#### Revised Regulatory Flexibility Analysis

##### (a) Small Businesses:

The purpose of the proposed amendments is to establish a definition for inclusive athletic activities and to establish the eligibility rules applicable to participants in such inclusive athletic activities. The proposed amendment will not impose any additional compliance requirements.

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

##### (b) Local Government:

##### 1. EFFECT OF RULE:

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

##### 2. COMPLIANCE REQUIREMENTS:

As the term Unified Sports is a trademarked name, the proposed amendment to the regulation categorizes this program as "inclusive athletic activities." The proposed amendment establishes a definition for inclusive athletic activities and establishes the eligibility rules applicable to

participants in such inclusive athletic activities. It is important to note that nothing in the amendments alter the eligibility limitations contained within Commissioner's regulation § 135.4(c)(7)(ii)(b)(1) for participation in traditional interscholastic athletic competition. The proposed rule is only applicable to students participating in inclusive athletic activities (i.e., the Unified Sports Program).

The proposed amendment establishes an exemption from the age and four-year limitation for students participating in inclusive athletic activities. A student who is enrolled in grades 9 through 12 and has not yet graduated from high school may continue to participate in inclusive athletic activities beyond the age of 19 and beyond four consecutive seasons of an inclusive athletic activity if the superintendent of schools or chief executive officer of the school or school system, as applicable, determines that the student meets the following criteria:

- such student is a bona fide student of the high school for which the student wishes to participate in inclusive athletic activities and has not graduated from high school; and
- such student is otherwise qualified to compete in the inclusive athletic activities for which he or she is applying for an exemption; and
- such student has undergone an adequate health examination by the director of school health services, and the director of school health services has determined that the student's participation in such activities will not present a safety or health concern for such student.

### 3. NEEDS AND BENEFITS:

Commissioner's Regulation § 135.4(c)(7)(ii) establishes the parameters for participation in interscholastic athletic competition for students in grades 7 through 12. The underlying spirit of Commissioner's regulations governing interscholastic athletics is to provide for the safety and equal opportunity for participation for public school students. These principles guide athletic eligibility determinations for all student athletes who wish to participate in interscholastic athletic competition.

Recently, the New York State Public High School Athletic Association (NYSPHSAA) and the Special Olympics New York organized a Unified Sports program available to all NYSPHSAA member schools. The Unified Sports Program provides for students with and without disabilities to participate on such teams for the purpose of training and competition. According to NYSPHSAA "[p]articipation is rooted in the principle of meaningful involvement which ensures that every player is given an opportunity to contribute to the success of his or her team through their unique skills. Inclusive activity is among the most conducive ways to break down stereotypes and foster relationships...."

This unique program which offers opportunities for participation in athletic competition, was not specifically contemplated in the regulations that establish the eligibility rules generally applicable to student athletes. NYSPHSAA has therefore been applying the duration of competition rule contained within Commissioner's regulation § 135.4(c)(7)(ii)(b)(1) and applicable to traditional interscholastic athletics to inclusive athletic activities. Generally, the regulation limits eligibility for senior high school athletic competition in a sport during each of four consecutive seasons of such sport, commencing with the pupil's entry into ninth grade and prior to graduation, and until the last day of the school year in which he or she attains the age of 19.

Because the Unified Sports program is designed with participation and inclusivity in mind, applying the existing duration of competition rule curtails a student's participation to four years and before attaining the age of 19. These current eligibility requirements are not aligned with the intent of the inclusive athletics program. There are a number of students who continue school beyond the age of athletic eligibility, most particularly students with disabilities, who often remain in school until age 21.

Since this program has increased in popularity, NYSPHSAA and Special Olympics New York, along with numerous other constituents, have approached the Department to allow students an extended time to participate in the Unified Sports program, as long as they continue to be eligible to attend school and such participation would not pose a safety risk.

### 4. PROFESSIONAL SERVICES:

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

### 5. COMPLIANCE COSTS:

The proposed amendments will not impose any additional program, service, duty, responsibility or costs beyond those imposed by the statute.

### 6. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

### 7. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to establish a definition for inclusive athletic activities and to establish the eligibility rules applicable to participants in such inclusive athletic activities. Accordingly, no alternatives were considered.

### 8. LOCAL GOVERNMENT PARTICIPATION:

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

#### *Revised Rural Area Flexibility Analysis*

Since the publication of a Notice of Proposed Rule Making was published in the State Register on September 25, 2019, substantial revisions were made to the proposed regulation as set forth in the Revised Regulatory Impact Statement submitted herewith.

These substantial revisions do not require any changes to the previously published Rural Area Flexibility Analysis.

#### *Revised Job Impact Statement*

Since the publication of a Notice of Proposed Rule Making was published in the State Register on September 25, 2019, substantial revisions were made to the proposed regulation as set forth in the Revised Regulatory Impact Statement submitted herewith.

These substantial revisions do not require any changes to the previously published Statement in Lieu of Job Impact Statement.

#### *Assessment of Public Comment*

Following publication of the Notice of Proposed Rule Making in the State Register on September 25, 2019, the Department received the following comments on the proposed regulation:

1. COMMENT: The Department received numerous comments in support of the proposed regulation indicating that the "extended eligibility" for inclusive athletic activities would benefit all students involved. Many commenters wrote to urge the Department to change the rule as soon as possible so more students could continue to participate in inclusive athletic activities.

RESPONSE: The Department agrees with these positive comments. The rule as written to amend Sections 135.1 and 135.4 of the Commissioner's Regulations relating to extended eligibility for participation in inclusive athletic activities is being presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at the December 2019 meeting of the Board of Regents. The rule will be in place for the 2019-2020 winter and spring athletic season.

## NOTICE OF ADOPTION

### Relates to Professional Development Plans and Other Related Requirements for School Districts and BOCES

**I.D. No.** EDU-40-18-00010-A

**Filing No.** 1141

**Filing Date:** 2019-12-10

**Effective Date:** 2019-12-24

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, 75.8, 200.2, 90.18, 100.2, 100.13, 100.15, 100.17, 100.19, Subparts 57-2, 151-1, 154-2, Parts 30 and 80 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101, 2017, 305(1), 3004(1), 3006, 3006-a and 3009

**Subject:** Relates to professional development plans and other related requirements for school districts and BOCES.

**Purpose:** To improve the quality of teaching and learning for teachers and leaders for professional growth.

**Text or summary was published** in the October 3, 2018 issue of the Register, I.D. No. EDU-40-18-00010-P.

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

**Revised rule making(s) were previously published in the State Register** on June 26, 2019 and September 25, 2019.

**Text of rule and any required statements and analyses may be obtained from:** Kirti Goswami, Education Department, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 486-3633, email: regcomments@nysed.gov

#### *Initial Review of Rule*

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is 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**

**Update Provisions Relating to Pupil Transportation**

**I.D. No.** EDU-52-19-00007-P

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

**Proposed Action:** Amendment of sections 156.1, 156.2, 156.3, 156.4, 156.5 and 156.12 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101, 207, 305(14)(d), 1604(23), 1709, 3602(7)(a)-(b), (d), 3624, 3625, 3635(4), 3637; Vehicle and Traffic Law, sections 509-g and 1229-d

**Subject:** Update Provisions Relating to Pupil Transportation.

**Purpose:** To update provisions of the Commissioner's Regulations relating to pupil transportation.

**Substance of proposed rule (Full text is posted at the following State website: <http://www.counsel.nysed.gov/rules/full-text-indices>):** The Department proposes updating the regulations pertaining to pupil transportation, as set forth in Part 156 of the Commissioner's regulations to align to current policies and procedures of the New York State Department of Motor Vehicles and the New York State Department of Transportation relating to pupil transportation. In addition to technical amendments, the proposed amendments make the following changes:

- Allows transportation contracts to be filed with the Commissioner within 120 days of approval of the contract by the board to align with the current practice (regulations were outdated and required 30 days). Contracts which cannot be awarded by August 1, shall be filed with the Commissioner within 5 days after approval with a written explanation for the delay.

- Elimination of installation of stop arms from the list of demonstrable enhancements in pupil safety since this is now mandatory equipment.

- Clarifies that standing passengers shall be not be permitted on a school bus unless it is during the first 10 days of school or due to a breakdown, crash or other unforeseen occurrence to be consistent with Education Law § 3635-c.

- Clarifies the definition of school bus driver means any person who drives a school bus to or from school or school activities.

- Clarifies the definition of a school bus attendant to mean any person who is employed for the purpose of attending to the special needs of a child based on his or her IEP to safely embark and disembark from a school bus which is owned, leased or contracted for by a public school district or BOCES, and for the purpose of assisting the school bus driver.

- Adds a new definition for regular route to mean any trip that occurs on a regular schedule, for the purpose of transporting students from a starting point to a destination and may include pick up and drop off of students enroute (home to school).

- Adds physician assistants to the list of licensed professions that can perform an examination of school bus drivers. Requires school bus drivers to be examined within eight weeks prior to the beginning of service (was previously four weeks).

- Requires the school bus driver physical performance test form to be submitted electronically to the pupil transportation unit. Prohibits the interval between physical performance tests to exceed 25 months (was previously 24 months). Clarifies that the physical performance test shall be conducted by a currently certified school bus driver instructor and aligns the proposed amendment with current practice relating to the test. Provides that no more than one re-examination per driver may be administered on the same day and that the administration of the test and the pass/fail determination shall be in accordance with the guidance from the Department. Removes old provisions which allowed additional time for districts to acquire a school bus driver instructor to perform the physical performance test.

- Clarifies the three types of school bus driver training: pre-service safety training, basic course safety training, and refresher safety training. Requires school bus drivers to have at least four hours (was previously two) of instruction on school bus safety practices which shall include at least one hour of training for the transport of children with disabilities prior to service. Requires school bus drivers to take 30 hours of basic course safety training and requires the required two-hour refresher training to contain at least one hour of instruction relating to the special needs of a pupil with a disability.

- Provides that a certified school bus driver instructor's physical presence is not required during the pre-service training of school bus drivers, monitors, or attendants, provided that such training is conducted under the general supervision of such an approved school bus driver instructor.

- Provides that the school bus driver instructor advisory committee

members are to be appointed for a three-year term (was previously annually) and requires them to be of good moral character.

- Provides for when a certified school bus driver instructor's certification can be suspended or revoked by the Department.

- Includes what master instructors must do to maintain certification as a master instructor and provides for when a master instructor's certification can be suspended or revoked by the Department.

- Adds physician assistants to the list of licensed professions that can perform an examination of school bus monitors and attendants and requires school bus monitors and attendants to be examined within eight weeks prior to the beginning of service (was previously two weeks).

- Requires the school bus monitor and attendant physical performance test form to be submitted electronically to the pupil transportation unit. Prohibits the interval between physical performance tests to exceed 25 months (was previously 24 months). Clarifies that the physical performance test shall be conducted by a currently certified school bus driver instructor and makes amendments to such test to conform with current practice. Removes the temporary waiver provision for the physical performance test for monitors and attendants. Provides that no more than one re-examination per driver may be administered on the same day and that the administration of the test and the pass/fail determination shall be in accordance with the guidance from the Department.

- Adds nonpublic schools to the list of employers whose employees serving pupils with a disabling condition must maintain CPR certification where such skills are required as part of the student's IEP.

- Clarifies the three types of school bus monitor and attendant training: pre-service safety training, basic course safety training, and refresher safety training. Requires at least four hours of pre-service training (was previously three hours). Requires a minimum of two hours of refresher training at least two times a year and requires that such refresher training include at least one hour of instruction relating to the special needs of a pupil with a disability.

- Requires school bus drivers to instruct pupils to cross the highway at a distance of at least 15 feet in front of the vehicle (was previously 10 feet) and to keep the school bus halted until they have reached the opposite side of the highway, street or private road and until such passengers are at least fifteen feet from the bus and either off the highway, street or private road or on a sidewalk.

- Adds the regulations of the Commissioner of the Department of Transportation to the list of regulations school bus drivers shall be familiar with.

- Includes "exempt tracks" to the list of exceptions to when school bus drivers are required to make full stops.

- Clarifies that the operation of a wheelchair lift shall not be considered as leaving a bus unattended.

- Prohibits the use of electronic cigarettes by drivers, monitors and attendants while on a school bus.

- Provides that the administration of drills on school buses shall be in accordance with the Department's Bus Safety Drill Guide and Compliance Form and provides that verbal bus mini safety drills should be conducted by a school bus driver prior to the beginning of every sports or activity trip.

- Requires school districts, which procure transportation through contracted vendors using an RFP, to set a minimum passing score threshold prior to evaluating RFPs, much as the State does in its grant applications, to ensure that winning bidders meet certain safety and responsibility standards.

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

**Data, views or arguments may be submitted to:** Christina Coughlin, Education Department, 89 Washington Avenue, Room 1075 EBA, Albany, NY 12234, (518) 474-7206

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

**Regulatory Impact Statement**

**1. STATUTORY AUTHORITY:**

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

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

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

Education Law § 305(14)(d) authorizes the board of education or the trustee of a district and a contractor providing pupil transportation services to such district may amend a contract for pupil transportation services

upon a finding that such amendment is necessary to comply with any federal, state or local law, rule or regulation imposed after the execution of such contract, or to enhance the safety of pupil transportation, as determined by the board or trustee subject to the approval of the commissioner pursuant to regulation.

Education Law § 1604(23) authorizes boards of education of common school districts to contract for the conveyance of pupils residing within the district, when authorized to do so under Education Law § 2021(19), by vote of the inhabitants of the district entitled to vote, or to contract for the operation, maintenance and garaging of motor vehicles owned by the district consistent with the regulations of the commissioner.

Education Law § 1709 enumerates the powers and duties of boards of education of union free school districts.

Education Law § 3602(7)(a)-(b) and (d) provides for the apportionment of public moneys to school districts employing eight or more teachers for pupil transportation and defines approved transportation operating expenses.

Education Law § 3624 authorizes the Commissioner of Education to establish and define qualifications of school bus drivers and to make rules and regulations governing the operation of transportation facilities used by pupils. Such rules and regulations shall include acts or conduct which would affect the safe operation of such transportation facilities.

Education Law § 3625 provides that every contract for transportation of school children shall be in writing and approved and filed by the superintendent of schools of the district.

Education Law § 3637 directs the Commissioner to promulgate regulations requiring school districts to minimize, to the extent practicable, the idling of the engine of any school bus and other vehicles owned or leased by the school district while such bus or vehicle is parked or standing on school grounds, or in front of any school.

Vehicle and Traffic Law § 509-g provides that each motor carrier shall require certain examinations and test for each bus driver it employs.

Vehicle and Traffic Law § 1229-d defines "school bus attendant", provides for screening of applicants for the position of school bus attendant by school districts, and requires the commissioner to promulgate rules and regulations requiring that every school bus attendant serving pupils with a disability receive school bus safety training and instruction relating to the understanding of and attention to the special needs of such pupils.

2. LEGISLATIVE OBJECTIVES:

Consistent with the above statutory authority, proposed amendments to Sections 156.1, 156.2, 156.3, 156.4, 156.5, and 156.12 of the Regulations of the Commissioner of Education updates such regulations to align to the current policies and procedures of the New York State Department of Motor Vehicles and the New York State Department of Transportation, as well as with current practice.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendments to the Regulations of the Commissioner of Education is to update such regulations to align to the current policies and procedures of the New York State Department of Motor Vehicles and the New York State Department of Transportation. In addition to the technical amendments, the proposed amendments make the following changes:

- Allows transportation contracts to be filed with the Commissioner within 120 days of approval of the contract by the board to align with the current practice (regulations were outdated and required 30 days). Contracts which cannot be awarded by August 1 shall be filed with the Commissioner within 5 days after approval with a written explanation for the delay.
- Elimination of installation of stop arms from the list of demonstrable enhancements in pupil safety since this is now mandatory equipment.
- Clarifies that standing passengers shall not be permitted on a school bus unless it is during the first 10 days of school or due to a breakdown, crash or other unforeseen occurrence to be consistent with Education Law § 3635-c.
- Clarifies the definition of school bus driver to mean any person who drives a school bus to or from school or school activities.
- Clarifies the definition of a school bus attendant to mean any person who is employed for the purpose of attending to the special needs of a child based on his or her IEP to safely embark and disembark from a school bus which is owned, leased or contracted for by a public school district or BOCES, and for the purpose of assisting the school bus driver.
- Adds a new definition for regular route to mean any trip that occurs on a regular schedule for the purpose of transporting students from a starting point to a destination and may include pick up and drop off of students enroute (home to school).
- Adds physician assistants to the list of licensed professions that can perform an examination of school bus drivers. Requires school bus drivers to be examined within eight weeks prior to the beginning of service (was previously four weeks).

- Requires the school bus driver physical performance test form to be submitted electronically to the pupil transportation unit. Prohibits the interval between physical performance tests to exceed 25 months (was previously 24 months). Clarifies that the physical performance test shall be conducted by a currently certified school bus driver instructor and aligns the proposed amendment with current practice relating to the test. Provides that no more than one re-examination per driver may be administered on the same day and that the administration of the test and the pass/fail determination shall be in accordance with the guidance from the Department. Removes old provisions which allowed additional time for districts to acquire a school bus driver instructor to perform the physical performance test.

- Clarifies the three types of school bus driver training: pre-service safety training, basic course safety training, and refresher safety training. Requires school bus drivers to have at least four hours (was previously two) of instruction on school bus safety practices which shall include at least one hour of training for the transport of children with disabilities prior to service. Requires school bus drivers to take 30 hours of basic course safety training and necessitates the required two-hour refresher training to contain at least one hour of instruction relating to the special needs of a pupil with a disability.
- Provides that a certified school bus driver instructor's physical presence is not required during the pre-service training of school bus drivers, monitors, or attendants, provided that such training is conducted under the general supervision of such an approved school bus driver instructor.
- Provides that the school bus driver instructor advisory committee members are to be appointed for a three-year term (was previously annually) and requires them to be of good moral character.
- Provides for when a certified school bus driver instructor's certification can be suspended or revoked by the Department.
- Includes what master instructors must do to maintain certification as a master instructor and provides for when a master instructor's certification can be suspended or revoked by the Department.
- Adds physician assistants to the list of licensed professions that can perform an examination of school bus monitors and attendants and requires school bus monitors and attendants to be examined within eight weeks prior to the beginning of service (was previously two weeks).
- Requires the school bus monitor and attendant physical performance test form to be submitted electronically to the pupil transportation unit. Prohibits the interval between physical performance tests to exceed 25 months (was previously 24 months). Clarifies that the physical performance test shall be conducted by a currently certified school bus driver instructor and makes amendments to such test to conform with current practice. Removes the temporary waiver provision for the physical performance test for monitors and attendants. Provides that no more than one re-examination per driver may be administered on the same day and that the administration of the test and the pass/fail determination shall be in accordance with the guidance from the Department.
- Adds nonpublic schools to the list of employers whose employees serving pupils with a disabling condition must maintain CPR certification where such skills are required as part of the student's IEP.
- Clarifies the three types of school bus monitor and attendant training: pre-service safety training, basic course safety training, and refresher safety training. Requires at least four hours of pre-service training (was previously three hours). Requires a minimum of two hours of refresher training at least two times a year and requires that such refresher training include at least one hour of instruction relating to the special needs of a pupil with a disability.
- Requires school bus drivers to instruct pupils to cross the highway at a distance of at least 15 feet in front of the vehicle (was previously 10 feet) and to keep the school bus halted until they have reached the opposite side of the highway, street or private road and until such passengers are at least 15 feet from the bus and either off the highway, street or private road or on a sidewalk.
- Adds the regulations of the Commissioner of the Department of Transportation to the list of regulations with which school bus drivers shall be familiar.
- Includes "exempt tracks" to the list of exceptions to when school bus drivers are required to make full stops.
- Clarifies that the operation of a wheelchair lift shall not be considered as leaving a bus unattended.
- Prohibits the use of electronic cigarettes by drivers, monitors and attendants while on a school bus.
- Provides that the administration of drills on school buses shall be in accordance with the Department's Bus Safety Drill Guide and Compliance Form and provides that verbal bus mini safety drills should be conducted by a school bus driver prior to the beginning of every sports or activity trip.
- Requires school districts, which procure transportation through contracted vendors using an RFP, to set a minimum passing score thresh-

old prior to evaluating RFPs, much as the State does in its grant applications, to ensure that winning bidders meet certain safety and responsibility standards.

#### 4. COSTS:

(a) Costs to State government: Any state transportation aid reimbursement for school bus driver, monitor and/or attendant training would be a cost to the State.

(b) Costs to local government: There would be costs to school districts to cover costs associated with school bus driver, monitor and/or attendant training, however, a percentage of such cost would be reimbursable through state transportation aid.

(c) Cost to private regulated parties: Businesses who contract with school districts outside of the city of New York for school bus driver, attendant, and/or monitor services would incur costs from the additional training, however, contractors include training costs in their contract pricing with school districts, this would result in only a minor cost to contractors where their contract rates do not adjust right away to reflect the additional training cost. Individual school bus drivers, monitors, and attendants at school districts located within the city of New York would incur costs from the additional training, however, some contractors and school districts do provide reimbursement for such costs.

(d) Cost 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:

There are no new forms, reporting requirements, or other recordkeeping associated with the proposed amendment.

#### 7. DUPLICATION:

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

#### 8. ALTERNATIVES:

The proposed amendment aligns the Regulations of the Commissioner of Education to the current policies and procedures of the New York State Department of Motor Vehicles and the New York State Department of Transportation, as well as with current practice. There are no significant alternatives to the proposed amendment and none were considered.

#### 9. FEDERAL STANDARDS:

There are no applicable Federal standards.

#### 10. COMPLIANCE SCHEDULE:

A Notice of Proposed Rule Making will be published in the State Register on December 24, 2019. Following the 60-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be presented to the Board of Regents for adoption at its April 2020 meeting. If adopted at the April 2020 meeting, the proposed amendment will become effective on April 22, 2020.

### *Regulatory Flexibility Analysis*

#### (a) Small businesses:

##### 1. EFFECT OF RULE:

The proposed rule updates the Regulations of the Commissioner of Education pertaining to pupil transportation, to align to the current policies and procedures of the New York State Department of Motor Vehicles and the New York State Department of Transportation, as well as with current practice. The proposed amendment applies to all school bus drivers, monitors and attendants including those employed by school transportation service companies.

##### 2. COMPLIANCE REQUIREMENTS:

Certain requirements in the proposed rule apply to small businesses that contract with school districts to provide student transportation. Compliance requirements are summarized as follows:

- Allows transportation contracts to be filed with the Commissioner within 120 days of approval of the contract by the board to align with the current practice (regulations were outdated and required 30 days). Contracts which cannot be awarded by August 1 shall be filed with the Commissioner within 5 days after approval with a written explanation for the delay.

- Clarifies that standing passengers shall not be permitted on a school bus unless it is during the first 10 days of school or due to a breakdown, crash or other unforeseen occurrence to be consistent with Education Law § 3635-c.

- Adds physician assistants to the list of licensed professions that can perform an examination of school bus drivers. Requires school bus drivers to be examined within eight weeks prior to the beginning of service (was previously four weeks).

- Requires the school bus driver physical performance test form to be submitted electronically to the pupil transportation unit. Prohibits the interval between physical performance tests to exceed 25 months (was previously 24 months). Clarifies that the physical performance test shall be conducted by a currently certified school bus driver instructor and aligns

the proposed amendment with current practice relating to the test. Provides that no more than one re-examination per driver may be administered on the same day and that the administration of the test and the pass/fail determination shall be in accordance with the guidance from the Department. Removes old provisions which allowed additional time for districts to acquire a school bus driver instructor to perform the physical performance test.

- Clarifies the three types of school bus driver training; pre-service safety training, basic course safety training, and refresher safety training. Requires school bus drivers to have at least four hours (was previously two) of instruction on school bus safety practices which shall include at least one hour of training for the transport of children with disabilities prior to service. Requires school bus drivers to take 30 hours of basic course safety training and necessitates the required two-hour refresher training to contain at least one hour of instruction relating to the special needs of a pupil with a disability.

- Provides that a certified school bus driver instructor's physical presence is not required during the pre-service training of school bus drivers, monitors, or attendants, provided that such training is conducted under the general supervision of such an approved school bus driver instructor.

- Provides that the school bus driver instructor advisory committee members are to be appointed for a three-year term (was previously annually) and requires them to be of good moral character.

- Provides for when a certified school bus driver instructor's certification can be suspended or revoked by the Department.

- Includes what master instructors must do to maintain certification as a master instructor and provides for when a master instructor's certification can be suspended or revoked by the Department.

- Adds physician assistants to the list of licensed professions that can perform an examination of school bus monitors and attendants and requires school bus monitors and attendants to be examined within eight weeks prior to the beginning of service (was previously two weeks).

- Requires the school bus monitor and attendant physical performance test form to be submitted electronically to the pupil transportation unit. Prohibits the interval between physical performance tests to exceed 25 months (was previously 24 months). Clarifies that the physical performance test shall be conducted by a currently certified school bus driver instructor and makes amendments to such test to conform with current practice. Removes the temporary waiver provision for the physical performance test for monitors and attendants. Provides that no more than one re-examination per driver may be administered on the same day and that the administration of the test and the pass/fail determination shall be in accordance with the guidance from the Department.

- Adds nonpublic schools to the list of employers whose employees serving pupils with a disabling condition must maintain CPR certification where such skills are required as part of the student's IEP.

- Clarifies the three types of school bus monitor and attendant training: pre-service safety training, basic course safety training, and refresher safety training. Requires at least four hours of pre-service training (was previously three hours). Requires a minimum of two hours of refresher training at least two times a year and requires that such refresher training include at least one hour of instruction relating to the special needs of a pupil with a disability.

- Requires school bus drivers to instruct pupils to cross the highway at a distance of at least 15 feet in front of the vehicle (was previously 10 feet) and to keep the school bus halted until they have reached the opposite side of the highway, street or private road and until such passengers are at least 15 feet from the bus and either off the highway, street or private road or on a sidewalk.

- Adds the regulations of the Commissioner of the Department of Transportation to the list of regulations with which school bus drivers shall be familiar.

- Includes "exempt tracks" to the list of exceptions to when school bus drivers are required to make full stops.

- Clarifies that the operation of a wheelchair lift shall not be considered as leaving a bus unattended.

- Prohibits the use of electronic cigarettes by drivers, monitors and attendants while on a school bus.

- Provides that the administration of drills on school buses shall be in accordance with the Department's Bus Safety Drill Guide and Compliance Form and provides that verbal bus mini safety drills should be conducted by a school bus driver prior to the beginning of every sports or activity trip.

- Requires school districts, which procure transportation through contracted vendors using an RFP, to set a minimum passing score threshold prior to evaluating RFPs, much as the State does in its grant applications, to ensure that winning bidders meet certain safety and responsibility standards.

##### 3. PROFESSIONAL SERVICES:

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

**4. COMPLIANCE COSTS:**

See the Costs Section of the Regulatory Impact Statement that is published in the State Register on this publication date for an analysis of the costs of the proposed rule.

**5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

The proposed rule does not impose any additional costs or technological requirements on small businesses.

**6. MINIMIZING ADVERSE IMPACT:**

The proposed amendment aligns the Regulations of the Commissioner of Education to the current policies and procedures of the New York State Department of Motor Vehicles and the New York State Department of Transportation, as well as with current practice. Therefore, no alternatives were considered for those located in rural areas of the State.

**7. SMALL BUSINESS PARTICIPATION:**

The Department has shared the proposed amendment with the New York State School Bus Contractors Association; which have members who work in small business.

**(b) Local governments:****1. EFFECT OF RULE:**

The proposed rule updates the Regulations of the Commissioner of Education pertaining to pupil transportation, to align to the current policies and procedures of the New York State Department of Motor Vehicles and the New York State Department of Transportation, as well as with current practice. The proposed amendment applies to each of the 695 public school districts in the State.

**2. COMPLIANCE REQUIREMENTS:**

The proposed amendment is necessary to align the Regulations of the Commissioner of Education to the current policies and procedures of the New York State Department of Motor Vehicles and the New York State Department of Transportation, as well as with current practice. See the summary of compliance requirements under (a)(2) above.

**3. PROFESSIONAL SERVICES:**

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

**4. COMPLIANCE COSTS:**

See the Costs Section of the Regulatory Impact Statement that is published in the State Register on this publication date for an analysis of the costs of the proposed rule.

**5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

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

**6. MINIMIZING ADVERSE IMPACT:**

The proposed amendment aligns the Regulations of the Commissioner of Education to the current policies and procedures of the New York State Department of Motor Vehicles and the New York State Department of Transportation, as well as with current practice. Therefore, no alternatives were considered for those located in rural areas of the State.

**7. LOCAL GOVERNMENT PARTICIPATION:**

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

**Rural Area Flexibility Analysis****1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:**

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

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

The purpose of the proposed amendments to the Regulations of the Commissioner of Education is to update such regulations to align to the current policies and procedures of the New York State Department of Motor Vehicles and the New York State Department of Transportation. In addition to the technical amendments, the proposed amendments make the following changes:

- Allows transportation contracts to be filed with the Commissioner within 120 days of approval of the contract by the board to align with the current practice (regulations were outdated and required 30 days). Contracts which cannot be awarded by August 1 shall be filed with the Commissioner within 5 days after approval with a written explanation for the delay.

- Elimination of installation of stop arms from the list of demonstrable enhancements in pupil safety since this is now mandatory equipment.

- Clarifies that standing passengers shall not be permitted on a school bus unless it is during the first 10 days of school or due to a breakdown, crash or other unforeseen occurrence to be consistent with Education Law § 3635-c.

- Clarifies the definition of school bus driver to mean any person who drives a school bus to or from school or school activities.

- Clarifies the definition of a school bus attendant to mean any person who is employed for the purpose of attending to the special needs of a child based on his or her IEP to safely embark and disembark from a school bus which is owned, leased or contracted for by a public school district or BOCES, and for the purpose of assisting the school bus driver.

- Adds a new definition for regular route to mean any trip that occurs on a regular schedule for the purpose of transporting students from a starting point to a destination and may include pick up and drop off of students enroute (home to school).

- Adds physician assistants to the list of licensed professions that can perform an examination of school bus drivers. Requires school bus drivers to be examined within eight weeks prior to the beginning of service (was previously four weeks).

- Requires the school bus driver physical performance test form to be submitted electronically to the pupil transportation unit. Prohibits the interval between physical performance tests to exceed 25 months (was previously 24 months). Clarifies that the physical performance test shall be conducted by a currently certified school bus driver instructor and aligns the proposed amendment with current practice relating to the test. Provides that no more than one re-examination per driver may be administered on the same day and that the administration of the test and the pass/fail determination shall be in accordance with the guidance from the Department. Removes old provisions which allowed additional time for districts to acquire a school bus driver instructor to perform the physical performance test.

- Clarifies the three types of school bus driver training: pre-service safety training, basic course safety training, and refresher safety training. Requires school bus drivers to have at least four hours (was previously two) of instruction on school bus safety practices which shall include at least one hour of training for the transport of children with disabilities prior to service. Requires school bus drivers to take 30 hours of basic course safety training and necessitates the required two-hour refresher training to contain at least one hour of instruction relating to the special needs of a pupil with a disability.

- Provides that a certified school bus driver instructor's physical presence is not required during the pre-service training of school bus drivers, monitors, or attendants, provided that such training is conducted under the general supervision of such an approved school bus driver instructor.

- Provides that the school bus driver instructor advisory committee members are to be appointed for a three-year term (was previously annually) and requires them to be of good moral character.

- Provides for when a certified school bus driver instructor's certification can be suspended or revoked by the Department.

- Includes what master instructors must do to maintain certification as a master instructor and provides for when a master instructor's certification can be suspended or revoked by the Department.

- Adds physician assistants to the list of licensed professions that can perform an examination of school bus monitors and attendants and requires school bus monitors and attendants to be examined within eight weeks prior to the beginning of service (was previously two weeks).

- Requires the school bus monitor and attendant physical performance test form to be submitted electronically to the pupil transportation unit. Prohibits the interval between physical performance tests to exceed 25 months (was previously 24 months). Clarifies that the physical performance test shall be conducted by a currently certified school bus driver instructor and makes amendments to such test to conform with current practice. Removes the temporary waiver provision for the physical performance test for monitors and attendants. Provides that no more than one re-examination per driver may be administered on the same day and that the administration of the test and the pass/fail determination shall be in accordance with the guidance from the Department.

- Adds nonpublic schools to the list of employers whose employees serving pupils with a disabling condition must maintain CPR certification where such skills are required as part of the student's IEP.

- Clarifies the three types of school bus monitor and attendant training: pre-service safety training, basic course safety training, and refresher safety training. Requires at least four hours of pre-service training (was previously three hours). Requires a minimum of two hours of refresher training at least two times a year and requires that such refresher training include at least one hour of instruction relating to the special needs of a pupil with a disability.

- Requires school bus drivers to instruct pupils to cross the highway at a distance of at least 15 feet in front of the vehicle (was previously 10 feet) and to keep the school bus halted until they have reached the opposite side of the highway, street or private road and until such passengers are at least 15 feet from the bus and either off the highway, street or private road or on a sidewalk.

- Adds the regulations of the Commissioner of the Department of Transportation to the list of regulations with which school bus drivers shall be familiar.

- Includes “exempt tracks” to the list of exceptions to when school bus drivers are required to make full stops.

- Clarifies that the operation of a wheelchair lift shall not be considered as leaving a bus unattended.

- Prohibits the use of electronic cigarettes by drivers, monitors and attendants while on a school bus.

- Provides that the administration of drills on school buses shall be in accordance with the Department’s Bus Safety Drill Guide and Compliance Form and provides that verbal bus mini safety drills should be conducted by a school bus driver prior to the beginning of every sports or activity trip.

- Requires school districts, which procure transportation through contracted vendors using an RFP, to set a minimum passing score threshold prior to evaluating RFPs, much as the State does in its grant applications, to ensure that winning bidders meet certain safety and responsibility standards.

### 3. COSTS:

The proposed amendment would be a cost to school districts to cover costs associated with receiving school bus driver, monitor and/or attendant training, however, a percentage of such cost would be reimbursable through state transportation aid.

### 4. MINIMIZING ADVERSE IMPACT:

The proposed amendment aligns the Regulations of the Commissioner of Education to the current policies and procedures of the New York State Department of Motor Vehicles and the New York State Department of Transportation, as well as with current practice. Therefore, no alternatives were considered for those located in rural areas of the State.

### 5. RURAL AREA PARTICIPATION:

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

### Job Impact Statement

It is not anticipated that the proposed amendment will impact jobs or employment opportunities. This is because the proposed amendment to sections 156.1, 156.2, 156.3, 156.4, 156.5, and 156.12 of the Regulations of the Commissioner of Education merely updates such regulations to align to the current policies and procedures of the New York State Department of Motor Vehicles and the New York State Department of Transportation and to current practice.

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 have no impact on jobs or employment opportunities attributable to its adoption or only a positive impact, 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.

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## Department of Environmental Conservation

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### NOTICE OF ADOPTION

#### Feeding of Wild Deer and Moose, Use of 4-Poster™ Devices

**I.D. No.** ENV-27-19-00001-A

**Filing No.** 1116

**Filing Date:** 2019-12-06

**Effective Date:** 2019-12-24

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

**Action taken:** Addition of Part 186 to Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 3-0301(1)(b), (c), 11-0303(2) and 11-0325(1)

**Subject:** Feeding of wild deer and moose, use of 4-Poster™ devices.

**Purpose:** To prohibit feeding of wild deer and moose, to define conditions for use of 4-Poster™ devices.

**Text of final rule:** A new Part 186 is added to 6 NYCRR to read as follows:

*Part 186 Feeding of wild white-tailed deer or wild moose*

186.1 Findings and purpose. The Department of Environmental Conservation (“Department”) finds that the intentional feeding of wild white-tailed deer or wild moose is not in the public interest, and will unnaturally concentrate wild white-tailed deer or wild moose and thereby lead to environmental harm including: destruction of natural habitat; disruption

of natural movements; increased risks for introduction, transmission or spread of disease; and alterations of behavior in wild white-tailed deer or wild moose that may increase danger to people or damage to property, or both. The purpose of this part is to: define the limited circumstances and lawful practices by which wild white-tailed deer or wild moose may be intentionally fed but not result in unnatural concentrations or environmental harm; to require that commercially produced foods for attracting or feeding deer or moose be labeled with a warning about the feeding prohibition; and to provide a clear procedure for the authorization and use of automated feeding devices to dispense 4-Poster™ Tickicide for control of ticks on deer that may transmit disease to humans.

186.2. Definitions. For the purposes of this Part, the following terms have the indicated meanings:

(a) “Automated feeding devices” are devices that dispense food material, such as corn, and dispense 4-Poster™ Tickicide (Environmental Protection Agency Registration No. 39039-12, Special Local Need Registration SLN NY-120001) onto deer to kill ticks.

(b) “Commercial deer foods” means food or food products labeled or packaged as a product to be used for feeding or attracting deer or moose, including those in packages that depict hunters, hunting, live or dead deer or moose, or antlers, use camouflage or bright orange coloration, or include words related to hunting, harvesting, or attracting deer or moose.

(c) “Deer or moose” means any free-ranging animal of Genus Cervus, Genus Odocoileus, or Genus Alces.

(d) “Feed or feeding of deer or moose” means to intentionally place or distribute food or food products, or any act to maintain the availability of such material, resulting in the attraction of deer or moose to a particular site or location and the consumption by deer or moose of such material or the substrate on which it is distributed. Placing or distributing commercial deer foods such that they are accessible to deer or moose is presumptive evidence of intent to feed deer or moose.

(e) “Food or food products” means any material including but not limited to any powders, liquids, fruits, vegetables, grains, minerals, or commercially produced foods made for consumption by humans or domestic or wild animals.

(f) “Incidental or indirect feeding” means using, placing, giving, exposing, depositing, distributing or scattering any food or food products for a different purpose than feeding or attracting deer or moose but that results in the attraction of one or more deer or moose. This includes the use and storage of birdseed in a manner that is accessible to deer or moose. This does not include normal agricultural or horticultural practices.

(g) “Municipality” is a State, County, Town or Village government of local or agency.

### 186.3. Prohibitions.

(a) No person shall intentionally feed deer or moose at any time in New York State except:

(1) under a license or permit issued by the Department pursuant to article 11 of the Environmental Conservation Law for bona fide scientific research, mitigation of wildlife damage or nuisance problems, wildlife disease surveillance and response, or wildlife population reduction programs only;

(2) by use of an automated feeding device that has 4-Poster™ Tickicide as permitted by the Department in accordance with Section 186.4;

(3) by planting, cultivating or harvesting of vegetation associated with normal agricultural or horticultural practices;

(4) by planting, cultivating or harvesting plants to enhance wildlife habitat conditions;

(5) by distribution of food material for livestock directly associated with livestock husbandry;

(6) by distribution of food material for legally possessed captive animals of the family Cervidae where measures are in place to eliminate the availability of food material to deer or moose; or

(7) by cutting of trees or brush.

(b) No person shall incidentally or indirectly feed deer or moose or maintain the availability of incidental or indirect food sources for deer or moose after the Department has issued a written warning notice to the person or persons directly responsible for the incidental or indirect feeding of a deer or moose.

(c) No person shall feed wild or captive animals of the family Cervidae with any material that contains protein derived from any mammalian tissue.

(d) No person shall sell at retail or offer for retail sale in New York commercial deer foods or deer feeding equipment unless such products or equipment are affixed with a label that reads as follows:

#### NOTICE TO CUSTOMERS

It is illegal to intentionally feed wild white-tailed deer and moose in New York State. Placing this product so that it is accessible to wild deer or moose in New York is presumptive evidence of intent to feed deer or moose.

Any person found intentionally feeding this product to wild deer or moose will be subject to prosecution pursuant to 6 NYCRR Part 186.

Such label may be obtained by download from the Department's website at [www.dec.ny.gov](http://www.dec.ny.gov) and must measure at least 3 inches by 4 inches and be prominently displayed on the top or the top half of the front of the product or package.

186.4 Authorization of automated feeding devices, with 4-Poster™ Tickicide.

(a) Eligible permittees. The Department may, at its discretion, issue permits pursuant to this section to any of the following entities or their designated representatives to deploy automated feeding devices using whole kernel corn in parts of the state where 4-Poster™ Tickicide is registered for use: municipalities, public or private landowners, or homeowner associations that, singly or in combination, own and control a contiguous land area inhabited by white-tailed deer and totaling at least 40 acres in size.

(b) Criteria for permit issuance. The following criteria must be met before a permit may be issued by the Department pursuant to this section:

(1) The applicant must identify the specific properties (e.g., tax parcel numbers, latitude/longitude, or UTM coordinates of proposed deployment locations) that are included in the proposed deployment area and their owners;

(2) The identified properties must include a contiguous land area totaling at least 40 acres in size;

(3) The applicant(s) must be one or more of the person(s) who own(s) property included in the application, or be an agent with written permission from the owner(s) of the property(ies) where the device(s) will be located;

(4) Written consent of owners of all properties that are wholly or partially included in a circle centered on each device location and with a radius of 745 feet must be provided as part of the application;

(5) The applicant must provide a written deer management plan using a format provided by the Department that will be implemented in conjunction with the use of 4-Poster™ Tickicide and an automated feeding device. At a minimum, the plan must include measures to ensure that white-tailed deer populations and the impacts of deer (e.g., vehicle collisions and damage to ornamental plantings and native vegetation) will not increase as a result of deploying the automated feeding devices. The deer management plan may include, but is not limited to, recreational hunting, culling, surgical sterilization, fencing of sensitive areas, and enforcement of State and local deer feeding prohibitions pursuant to this Part or local laws or regulations. The plan must clearly indicate how it relates to any deer management plans currently in place for the municipality where automated feeding devices would be deployed. Prior to the issuance of a permit for an automated feeding device using 4-Poster™ Tickicide, the deer management plan must be approved by the Department. The Department may deny a permit to any person that it determines has not adequately considered and incorporated deer population management techniques in conjunction with deployment of automated feeding devices. Examples of this would include, but not be limited to, maintaining landowner restrictions on deer hunting that exceed State and local statutes necessary to ensure public safety;

(6) If the applicant is not a municipality, written approval of the specific location(s) of deployment of automated feeding devices with 4-Poster™ Tickicide must be provided by the smallest municipality with jurisdiction where the property is located; and

(7) Permit applications may be submitted at any time of year using forms provided by the Department.

(c) Permit conditions and reporting requirements:

(1) Automated feeding devices may only be used in parts of the state where 4-Poster™ Tickicide is registered for use and may be deployed only at the locations identified in an application approved by the Department;

(2) Permits may be issued for up to a 3-year period, but will include an annual reporting requirement using a form provided by the Department. Annual reports shall be submitted to the Department on or before December 31 and shall include a summary of bait consumption and 4-Poster™ Tickicide applications by week for each automated feeding device, recommendations for future use of automated feeding devices in the areas covered by the permit, and a summary of actions employed by the permittee to control deer population growth and impacts and monitor impacts;

(3) Permits may allow deployment and maintenance of automated feeding devices with 4-Poster™ Tickicide at any time of year;

(4) Automated feeding devices with 4-Poster™ Tickicide may not be placed within 300 feet of a public highway pursuant to Environmental Conservation Law 11-0505(8);

(5) Automated feeding devices with 4-Poster™ Tickicide may not be placed within 300 feet of any dwelling, multiple dwelling, playground or any other locations where children may be present without adult supervision, unless the area around the automated feeding device with 4-Poster™ Tickicide is surrounded with a fence 28 to 30 inches high with a minimum diameter of 29 feet and constructed in accordance with specifications outlined in New York State-approved labeling for 4-Poster™ Tickicide;

(6) The Department may, when it determines that attraction of black bears or other non-target species (e.g., raccoons) poses an ecological or public safety risk, require that automated feeding devices with 4-Poster™ Tickicide be surrounded with an electrified fence with a minimum diameter of 29 feet, constructed and maintained in such a manner as to prevent any non-target species of concern from gaining access to the automated feeding device;

(7) Any person that receives a permit to use an automated feeding device with 4-Poster™ Tickicide and any municipality that endorses such a permit issued to any entity located in their jurisdiction must take steps to inform the public, including landowners, hunters, and local law enforcement agencies, of the presence and locations of automated feeding devices in their area. Examples of such steps would include but not be limited to notices on municipal websites, in local newspapers, and posted at entrances to properties where automated feeding devices with 4-Poster™ Tickicide are deployed;

(8) The permittee shall deploy automated feeding devices with 4-Poster™ Tickicide in accordance with the manufacturer's instructions, in compliance with U.S. Environmental Protection Agency and New York State label requirements and subject to the applicable provisions of Environmental Conservation Law Article 33;

(9) An automated feeding device shall only be baited with feed when rollers are charged with 4-Poster™ Tickicide and all bait shall be removed and disposed of in an approved waste disposal facility upon cessation of 4-Poster™ Tickicide application; and

(10) Additional permit conditions may be included at the Department's discretion.

(d) Revocation. Permits may be revoked for violation of permit conditions or failure to implement and maintain deer management measures as described in the Department-approved deer management plan, or when the Department determines that the continued use of automated feeding devices with 4-Poster™ Tickicide poses a threat of disease spread or transmission.

(e) An automated feeding device with 4-Poster™ Tickicide deployed in accordance with a Department-issued permit shall not be considered a "pre-established bait pile" that would prohibit the taking of deer by a licensed hunter pursuant to ECL 11-0901(4)(b)(7).

Section 189.2 is amended as follows:

Subdivision (f) is repealed.

Subdivisions (g) through (k) are renumbered as subdivision (f) through (j).

Section 189.3 is amended as follows:

Subdivisions (b) and (c) are repealed, and existing subdivisions (d) through (h) are renumbered as subdivisions (b) through (f).

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 186.2(a), (d), (f), 186.4(a), (b)(3), (4) and (6).

**Text of rule and any required statements and analyses may be obtained from:** Jeremy Hurst, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8883, email: [jeremy.hurst@dec.ny.gov](mailto:jeremy.hurst@dec.ny.gov)

**Additional matter required by statute:** A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

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

The original Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement as published in the Notice of Proposed Rule Making, remains valid and does not need to be amended.

**Initial Review of Rule**

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

**Assessment of Public Comment**

The Department received approximately 60 comments on the proposed regulation. We reviewed the substance of each comment and organized our responses by topic. Comments not pertinent to this rule making are not addressed here.

## 1. Deer Feeding

## Comment:

Several writers expressed support for the proposed ban on deer feeding, noting that feeding concentrates deer in a small area, leads to damage to forests and cultivated plants, and may contribute to high tick densities and tick-borne disease rates. Some of these commenters also suggested various changes intended to strengthen the regulation, including: banning all sale of commercial deer foods in New York, expanding the labeling requirement to include online sales and all types of animal feed, requiring stores to keep records of all people who buy commercial deer foods and share those records with law enforcement personnel, rescinding the hunting privileges of anyone found guilty of feeding deer or moose, and expanding the “presumptive evidence” declaration in 186.2(d) to include all types of animal feed.

## Response:

The Department appreciates these writers’ understanding of the problems caused by deer feeding and commitment to preventing them. However, we believe that most of the above suggestions would cause undue hardship for retailers, people who feed birds, or people who wish to purchase commercial deer foods to use in other states or for feeding legally possessed captive cervids. Penalties for violations of state regulation are set by the Legislature, not the Department.

## Comment:

Several writers objected to the ban on deer feeding out of concern for the well-being of the deer, expressing a belief that deer will starve in the winter if they are not fed by people.

## Response:

Deer are well-adapted to survive winter, and they thrived in New York for millennia before people started feeding them. In fact, as the climate has warmed in recent decades, they have expanded their range northward as far as the Northwest Territories in Canada. During lengthy periods of deep snow, when travel is difficult, some deer may starve after all of the plants easily accessible to them have been eaten. This is a natural process that keeps deer populations in balance with the habitat. Feeding deer in the winter destroys this balance, keeping deer densities artificially high and preventing habitat from recovering from overbrowsing, thus ensuring that the deer remain unnaturally dependent on people. Those who wish to provide for deer can do so in an ecologically sustainable manner by planting native plants that deer eat.

## Comment:

Some writers objected to the feeding ban because they want to create and maintain higher deer densities so that there will be more deer for hunters.

## Response:

The Department has a responsibility to maintain wildlife populations at ecologically appropriate levels to keep ecosystems healthy for future generations. High deer densities result in overbrowsing that destroys habitat for other wildlife species and can threaten the survival of plant species and forest communities, along with the many ecosystem services they provide.

## Comment:

Some writers objected to the feeding ban based on the pleasure they derive from watching the deer they feed and feeling connected to nature.

## Response:

The Department tries to facilitate ecologically sound viewing and enjoyment of wildlife. Planting native plants that provide food and habitat for deer and other species can provide year-round wildlife-viewing opportunities.

## Comment:

Some writers dismissed the possibility of deer feeding contributing to the spread of disease as unimportant. They pointed out that deer naturally live in groups and groom each other, that they may eat from the same plants, and that chronic wasting disease (CWD) is not known to occur in New York currently. One said that the Department should not try to prevent CWD from spreading through New York’s deer herd.

## Response:

Artificial feeding sites result in deer coming together in larger numbers over a longer period of time than they normally do, thereby creating more opportunity for disease to spread. Deer foraging together under natural conditions may pull different twigs off the same bush or pick up different apples under the same tree, but they don’t typically eat from the exact same spot, as many deer may at an artificial feeding site.

CWD isn’t the only disease that affects white-tailed deer. The Department wants to prevent situations that facilitate the spread of any diseases or parasites. Although we monitor continually for CWD, if it does appear again in the state, we will probably not detect it immediately. Any measures in place to slow its spread will help the control efforts. Unchecked CWD could devastate rural economies and the hunting traditions of many families in the state.

## Comment:

Some writers expressed concern that the proposed regulation would essentially criminalize bird feeding, such that people would be ticketed for any deer being attracted to birdfeeders.

## Response:

Similar to the way incidental bear feeding is handled pursuant to the bear feeding prohibitions in Part 187.1, incidental deer feeding will be addressed by law enforcement only when it is creating a problem. In those situations, a warning letter will be issued to give the person responsible for the incidental feeding an opportunity to take steps (for example, by temporarily removing their birdfeeder, raising its height, putting a fence around it, and/or changing their seed mix to reduce waste by birds) to eliminate the problematic situation.

## Comment:

Some writers noted inconsistent aspects of the regulation, in that the intent is to prohibit feeding of deer, but food plots and use of 4-Posters™ are still allowed.

## Response:

Deer feeding behavior in a wildlife planting or food plot mimics feeding behavior in other agricultural fields or areas of concentrated natural food (e.g., acorns), and does not entail the same biological, ecological, and behavioral consequences as intentional deer feeding. The severe and growing problem of tick-borne diseases has created substantial public interest in trying 4-Posters™ as a method of reducing the public health threat. DEC is providing this avenue for citizens to try to address these serious concerns, incorporating criteria and requirements designed to ensure that negative impacts don’t increase as a result of the feeding.

## Comment:

One writer suggested that DEC should create an application process for deer feeding and require applicants to have deer management plans.

## Response:

Deer populations should be managed so that they are within the carrying capacity of the habitat. Feeding is not part of an ecologically sustainable management strategy.

## Comment:

One writer suggested that mineral blocks/licks would make deer healthier and should be excluded from the definition of feeding deer.

## Response:

Environmental Conservation Law 11-0505(3) prohibits use of salt licks for deer in New York.

## 2. 4-Posters™

## Comment:

Several writers objected to the use of 4-Posters™, expressing a variety of concerns, such as: deer density and related problems will increase; populations of non-target wildlife and related problems will increase; risk of CWD will increase; people, non-target wildlife and the environment will be exposed to potentially harmful pesticide from the devices or the deer that have fed at them; long-term use of 4Posters™ may lead to development of permethrin resistance by ticks, mosquitoes and other disease vector species that feed heavily on deer; deer may be harmed by sudden access to large amounts of corn when the devices are first put out; people who just want to feed or bait deer will use the devices inappropriately.

## Response:

The Department acknowledges the validity of these concerns. The proposed regulation contains many elements designed to address these issues. For example, permits won’t be granted to applicants who aren’t taking steps to ensure that deer density doesn’t increase, the Department can impose additional requirements if attraction of non-target species poses a problem, and permits can be revoked if 4-Poster™ use is increasing disease risk. The need for a licensed pesticide applicator to maintain the devices and the requirements for deer population management, impact monitoring, and thorough reporting should help prevent misuse of 4-Posters™. Devices will typically be activated in the spring when warmer weather increases people’s exposure to ticks, so the access to corn is less likely to harm deer than if it were provided in the winter, when they are normally eating very low-nutrient food.

Permethrin is already commonly applied to the landscape by government agencies and private individuals trying to control mosquitoes and ticks. A Cornell University study in Suffolk County found that even deer in areas without 4-Posters™ had permethrin on their hides, presumably picked up from the landscape. Permittees will be required to notify the public about the presence of 4-Posters™ and provide hunters with information on best practices for safe handling so that they can avoid being exposed to the pesticide on the deer. The Cornell study did not show movement of permethrin into the deer’s bodies through the bloodstream, and even if permethrin were to be transferred to the meat during butchering, the concentrations found in the study were deemed by the New York State Department of Health to present a very low health risk.

## Comment:

Some writers contended that 4-Posters™ should not be allowed because they don’t effectively control ticks or reduce disease risk.

## Response:

Although studies have shown that an appropriately designed 4-Poster™ program can lower tick populations in the area immediately around the devices, it is true that an effect on disease rates in humans has not been demonstrated. Nevertheless, due to the lack of available options for preventing tick-borne diseases and the expectation that fewer ticks should result in less tick-borne disease, there is demand for 4-Poster™ deployment in some communities and public agencies. Recognizing the lack of proven approaches, the Department is facilitating this option for addressing a serious public health problem.

## Comment:

One writer objected to the potential for 4-Posters™ to be deployed at any time of year, pointing out that the ticks they are designed to kill aren't active in the winter in colder parts of the state.

## Response:

The Department will modify permit dates and conditions as necessary to ensure appropriate use of the devices. In warmer parts of the state, which is where ticks are most abundant, ticks may be active at any time of year.

## Comment:

One writer objected to the regulation being written specifically about a single brand of automated feeding device.

## Response:

4-Poster™ Tickicide is the only product designed for self-treatment of deer that is registered for use in the state of New York. If other such products become available, the regulation can be modified to include them.

## Comment:

One writer who doesn't want to allow hunting objected to the requirement for measures to control deer populations and the exclusion of 4-Posters™ from the definition of bait.

## Response:

The Department is authorizing 4-Poster™ use to combat the significant public health problem of tick-borne disease, and high deer density is a major contributor to that problem. It would be irresponsible to ignore that aspect of the problem, let alone to allow feeding with 4-Posters™ to result in higher deer densities. If the devices were considered bait, they would functionally prevent hunting in the deployment area, which would be an obstacle to population control.

## Comment:

A couple of writers objected to the requirements and conditions for 4-Poster™ use, contending that the Department should simply allow the devices to be used as winter feeding stations or to kill ticks with no limitations or oversight.

## Response:

Feeding of deer can lead to increased deer density, changes in deer behavior, and a variety of negative environmental and societal impacts. The intent of the regulation is to allow 4-Posters™ to be used to combat the public health threat posed by disease-carrying ticks, while preventing the deer feeding involved from increasing deer densities or the associated problems.

## Comment:

One writer recommended including an explicit requirement for tick population monitoring in the regulation.

## Response:

As with other permits issued by the Department, 4-Poster™ permits will include conditions that are not explicitly laid out in the relevant regulation. As described in 186.4(c)(2), the required annual reports cover monitoring of deer impacts, which includes tick density. This will provide both the permittee and the Department with an assessment of device effectiveness.

## 3. General

## Comment:

A few writers had suggestions and questions related to clarifying specific elements of the regulation's wording.

## Response:

The wording was reviewed and some changes were made to increase clarity.

## Office of Parks, Recreation and Historic Preservation

### NOTICE OF ADOPTION

#### Listing of State Parks, Parkways, Recreation Facilities and Historic Sites

**I.D. No.** PKR-37-19-00001-A

**Filing No.** 1124

**Filing Date:** 2019-12-09

**Effective Date:** 2019-12-24

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

**Action taken:** Amendment of sections 384.1(c), (e), 384.6(e), 384.10(e) and 384.11(a) of Title 9 NYCRR.

**Statutory authority:** Parks, Recreation and Historic Preservation Law, sections 3.09(8) and 13.03

**Subject:** Listing of state parks, parkways, recreation facilities and historic sites.

**Purpose:** To update the listing of state parks, parkways, recreation facilities and historic sites.

**Text or summary was published** in the September 11, 2019 issue of the Register, I.D. No. PKR-37-19-00001-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Nicholas Ference, Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, NY 12238, (518) 486-2921, email: Nicholas.Ference@parks.ny.gov

#### Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2024, which is no later than the 5th year after the year in which this rule is being adopted.

#### Assessment of Public Comment

The agency received no public comment.

## Public Service Commission

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

#### SUEZ Water New York Inc.'s Acquisition of 100 Percent of Heritage Hills Water Works Corporation's Assets

**I.D. No.** PSC-52-19-00001-P

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

**Proposed Action:** The Public Service Commission is considering a joint petition filed on November 19, 2019 by SUEZ Water New York Inc. and Heritage Hills Water Works Corporation for the proposed acquisition of 100 percent of Heritage Hills Water Works Corporation's assets.

**Statutory authority:** Public Service Law, sections 5, 17, 18, 31, 39, 80, 89-c and 89-h

**Subject:** SUEZ Water New York Inc.'s acquisition of 100 percent of Heritage Hills Water Works Corporation's assets.

**Purpose:** To determine if the proposed acquisition is in the public interest.

**Substance of proposed rule:** The Public Service Commission is considering a joint petition filed on November 19, 2019 by SUEZ Water New York Inc. (SWNY) and Heritage Hills Water Works Corporation (Heritage Hills) for the proposed acquisition of 100% of Heritage Hills's assets by SWNY.

Heritage Hill provides water service to 2,643 customers in The Town of Somers, Westchester County. After the acquisition, SWNY proposes to assume responsibility of the operation and management of the water production, storage and distribution facilities that serve Heritage Hill's ratepayers.

The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: [www.dps.ny.gov](http://www.dps.ny.gov). The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

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

**Data, views or arguments may be submitted to:** Michelle L. Phillips, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [secretary@dps.ny.gov](mailto: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.

(19-W-0726SP1)

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

**New York State Reliability Council's Establishment of an Installed Reserve Margin of 18.9 Percent**

**I.D. No.** PSC-52-19-00002-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 an Installed Reserve Margin of 18.9 percent established by the New York State Reliability Council for the Capability Year beginning May 1, 2020, and ending April 30, 2021.

**Statutory authority:** Public Service Law, sections 4(1), 5(2), 65(1), 66(1), (2), (4) and (5)

**Subject:** New York State Reliability Council's establishment of an Installed Reserve Margin of 18.9 percent.

**Purpose:** To ensure adequate levels of Installed Capacity.

**Substance of proposed rule:** The Public Service Commission (Commission) is considering an Installed Reserve Margin (IRM) of 18.9% established by the New York State Reliability Council's Executive Committee on December 6, 2019, for the Capability Year beginning May 1, 2020, and ending April 30, 2021.

The IRM is based on the Technical Study Report dated December 6, 2019, and entitled "New York Control Area Installed Capacity Requirement for the Period May 2020 to April 2021" (Report).

The full text of the report is available on the internet at: [http://www.nysrc.org/NYSRC\\_NYCA\\_ICR\\_Reports.html](http://www.nysrc.org/NYSRC_NYCA_ICR_Reports.html). The Commission may adopt, reject, or modify, in whole or in part, the proposed IRM, and may resolve other 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](mailto:john.pitucci@dps.ny.gov)

**Data, views or arguments may be submitted to:** Michelle L. Phillips, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [secretary@dps.ny.gov](mailto: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.

(07-E-0088SP14)

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

**Notice of Intent to Submeter Electricity and Waiver of Energy Audit**

**I.D. No.** PSC-52-19-00003-P

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

**Proposed Action:** The Commission is considering the notice of intent and waiver request of Bedford 203, L.P. to submeter electricity at 211 East 203rd Street, Bronx, New York. Located in the service territory of Consolidated Edison Company of New York, Inc.

**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 of energy audit.

**Purpose:** To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place.

**Substance of proposed rule:** The Commission is considering the notice of intent and waiver request filed by Bedford 203, L.P. on December 3, 2019, to submeter electricity at 211 East 203rd Street, Bronx, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison).

By stating its intent to submeter electricity, Bedford 203, L.P. requests authorization to take electric service from Con Edison and then distribute and meter that electricity to its residents. Submetering of electricity to residential residents is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96. The Commission is also considering the Owner's request for waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent or more of the residents receive income-based housing assistance. The owner states that an energy audit is not appropriate because in this case the building constitutes new construction, and thus must comply with the current New York State Energy Conservation Construction Code, which provides strict energy conservation requirements for new and renovated buildings, including the design and construction of energy-efficient building envelopes, mechanical, lighting and power systems.

The full text of the notice of intent and the full record of the proceeding may be reviewed online at the Department of Public Service web page: [www.dps.ny.gov](http://www.dps.ny.gov). The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

**Data, views or arguments may be submitted to:** Michelle L. Phillips, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [secretary@dps.ny.gov](mailto: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.

(19-E-0738SP1)

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

**Notice of Intent to Submeter Electricity**

**I.D. No.** PSC-52-19-00004-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 Fourth Street Troy, LLC to submeter electricity at 100 Congress Street, Troy, New York 12180.

**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 ensure adequate submetering equipment and consumer protections are in place.

**Substance of proposed rule:** The Commission is considering the notice of intent, filed by Fourth Street Troy, LLC on December 5, 2019, to submeter electricity at 100 Congress Street, Troy, New York 12180, located in the service territory of Niagara Mohawk Power Corporation d/b/a National Grid.

By stating its intent to submeter electricity, Fourth Street Troy, LLC requests authorization to take electric service from National Grid and then distribute and meter that electricity to its tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96.

The full text of the notice of intent and the full record of the proceeding may be reviewed online at the Department of Public Service web page: [www.dps.ny.gov](http://www.dps.ny.gov). The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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

**Data, views or arguments may be submitted to:** Michelle L. Phillips, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [secretary@dps.ny.gov](mailto: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.

(19-E-0743SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Compensation of and Rates for Distributed Energy Resources

**I.D. No.** PSC-52-19-00005-P

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

**Proposed Action:** The Commission is considering the Staff Whitepaper on Rate Design for Mass Market Net Metering Successor Tariff recommending the continuation of Net Energy Metering for all eligible mass market projects subject to rate design modifications.

**Statutory authority:** Public Service Law, sections 5(1)(b), (2), 65(1), (2), (3), 66(2), (5) and 66-p

**Subject:** Compensation of and rates for distributed energy resources.

**Purpose:** To encourage the development of and ensure just and reasonable rates for distributed energy resources.

**Substance of proposed rule:** The Public Service Commission is considering the Staff Whitepaper on Rate Design for Mass Market Net Metering Successor Tariff (the Staff Whitepaper) filed on December 9, 2019.

The Staff Whitepaper recommends the continuation of net energy metering for all eligible mass market projects subject to rate design modifications, as well as the continuation of net energy metering for on-site projects of demand-metered non-residential customers where the project's rated capacity is under 750 kW. Specifically, the Staff Whitepaper recommends that mass market customers who install on-site, net-metering eligible, generation systems after January 1, 2021 be subject to a monthly Customer Benefit Contribution based on system size, designed to recover public benefit funds that net metering otherwise allows those customers to avoid and to thereby reduce the identified cost shifts from participants to non-participants. Staff recommends that the Commission modify the existing eligibility deadline for participation in net metering under current rules from January 1, 2020 to January 1, 2021. The Staff Whitepaper also recommends available alternate rates, including time-of-use rates and optional standby rates, continue to be available to mass market customers with on-site generation.

The full text of the Staff Whitepaper and the full record of the proceeding may be reviewed online at the Department of Public Service web page: [www.dps.ny.gov](http://www.dps.ny.gov). The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

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

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

(15-E-0751SP31)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Authorization to Defer Pension Settlement Losses

**I.D. No.** PSC-52-19-00006-P

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

**Proposed Action:** The Commission is considering a petition of Niagara Mohawk Power Corporation d/b/a National Grid for authorization to defer actuarial experience pension settlement losses for the fiscal year ending March 31, 2019.

**Statutory authority:** Public Service Law, sections 65 and 66

**Subject:** Authorization to defer pension settlement losses.

**Purpose:** To address the ratemaking related to the pension settlement losses.

**Substance of proposed rule:** The Commission is considering a petition, filed on February 28, 2019 by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) to defer actuarial experience pension settlement losses.

National Grid requested authorization to defer the early accounting recognition of normally occurring actuarial experience losses for the fiscal year ending March 31, 2019 (FY 2019) associated with lump sum payments to National Grid's employees upon their retirement. As of December 31, 2018, the Company had incurred approximately \$8.1 million in losses for FY 2019.

The full text of the petition and the full record of the proceeding may be viewed online at the Department of Public Service web page: [www.dps.ny.gov](http://www.dps.ny.gov). The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

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

**Data, views or arguments may be submitted to:** Michelle L. Phillips, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [secretary@dps.ny.gov](mailto: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.

(19-M-0133SP1)

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## Department of Taxation and Finance

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### NOTICE OF ADOPTION

#### **New York State and City of Yonkers Withholding Tables and Other Methods**

**I.D. No.** TAF-40-19-00009-A

**Filing No.** 1140

**Filing Date:** 2019-12-10

**Effective Date:** 2019-12-24

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

**Action taken:** Repeal of Appendixes 10, 10-A; addition of new Appendixes 10 and 10-A to Title 20 NYCRR.

**Statutory authority:** Tax Law, sections 171, subdivision First, 671(a)(1), 697(a), 1321(a), 1329(a), 1332(a); Code of the City of Yonkers, sections 15-105, 15-108, 15-111; L. 2016, ch. 60, part TT

**Subject:** New York State and City of Yonkers withholding tables and other methods.

**Purpose:** To provide current New York State and City of Yonkers withholding tables and other methods.

**Text or summary was published** in the October 2, 2019 issue of the Register, I.D. No. TAF-40-19-00009-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Kathleen D. Chase, Tax Regulations Specialist II, Department of Taxation and Finance, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: kathleen.chase@tax.ny.gov

#### **Initial Review of Rule**

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, 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.

**HEARINGS SCHEDULED  
FOR PROPOSED RULE MAKINGS**

Agency I.D. No.	Subject Matter	Location—Date—Time
<b>Environmental Conservation, Department of</b>		
ENV-43-19-00006-P .....	Class I and Class SD waters	Department of Environmental Conservation, Region 2, 4740 21st St., Long Island City, NY—January 8, 2020, 2:00 p.m.
ENV-43-19-00010-P .....	Repeal and replace 6 NYCRR Part 622 and amend 6 NYCRR Parts 620, 621 and 624	Department of Environmental Conservation, 625 Broadway, Albany, NY—January 7, 2020, 1:00 p.m.
ENV-48-19-00008-P .....	Plastic bag reduction, reuse and recycling	Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A/B, Albany, NY—January 27, 2020, 1:00 p.m.



**ACTION PENDING INDEX**

The action pending index is a list of all proposed rules which are currently being considered for adoption. A proposed rule is added to the index when the notice of proposed rule making is first published in the *Register*. A proposed rule is removed from the index when any of the following occur: (1) the proposal is adopted as a permanent rule; (2) the proposal is rejected and withdrawn from consideration; or (3) the proposal's notice expires.

Most notices expire in approximately 12 months if the agency does not adopt or reject the proposal within that time. The expiration date is printed in the second column of the action pending index. Some notices, however, never expire. Those notices are identified by the word "exempt" in the second column. Actions pending for one year or more are preceded by an asterisk(\*).

For additional information concerning any of the proposals

listed in the action pending index, use the identification number to locate the text of the original notice of proposed rule making. The identification number contains a code which identifies the agency, the issue of the *Register* in which the notice was printed, the year in which the notice was printed and the notice's serial number. The following diagram shows how to read identification number codes.

Agency code	Issue number	Year published	Serial number	Action Code
<b>AAM</b>	<b>01</b>	<b>12</b>	<b>0001</b>	<b>P</b>

Action codes: P — proposed rule making; EP — emergency and proposed rule making (expiration date refers to proposed rule); RP — revised rule making

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
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**AGING, OFFICE FOR THE**

AGE-34-19-00014-P	08/20/20	Limits on Administrative Expenses and Executive Compensation	To bring this rule into compliance with current law in New York State
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**AGRICULTURE AND MARKETS, DEPARTMENT OF**

AAM-21-19-00002-ERP	05/21/20	Control of the European Cherry Fruit Fly	To help control the spread of the European Cherry Fruit Fly (ECFF), which renders cherries unmarketable if they are infested.
AAM-33-19-00003-P	08/13/20	State aid to districts	To conform Part 363 to S&WCL Sec. 11-a statutory amendments and to make technical amendments.
AAM-43-19-00009-P	10/22/20	Control of the Asian Long Horned Beetle (ALB)	To lift approximately 58 square miles of Asian long horned beetle quarantine in Brooklyn and western Queens
AAM-47-19-00002-P	11/19/20	Golden Nematode ( <i>Globodera Rostochiensis</i> ) Quarantine	To lift the Golden Nematode quarantine in portions of the Towns of East Hampton and Riverhead in Suffolk County.

**ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, OFFICE OF**

ASA-44-19-00002-P	10/29/20	Limits on administrative expenses and executive compensation	To define limits on administrative expenses and executive compensation in accordance with state law and Executive Order 38
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**AUDIT AND CONTROL, DEPARTMENT OF**

AAC-49-19-00002-P	12/03/20	Relates to interest rate of estimated earnings; filing of documents; maximum loan amount; and electronic signatures	Update and conform regulations relating to interest; filing of documents; maximum loan amount; and electronic signatures
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Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>CHILDREN AND FAMILY SERVICES, OFFICE OF</b>			
CFS-51-18-00010-P	12/19/19	Residential and non-residential services to victims of domestic violence	To conform the existing regulations to comply with state and federal laws regarding services to victims of domestic violence
CFS-36-19-00004-ERP	09/03/20	Removal of non-medical exemption from vaccination regulations for child day care programs	To remove the non-medical exemption from vaccination regulations for child day care programs
CFS-39-19-00005-EP	09/24/20	Implement federal statutory requirements to include enhanced background checks, annual inspections, annual training and safety.	Implement federal statutory requirements to include enhanced background checks, annual inspections, annual training and safety.
CFS-39-19-00007-EP	09/24/20	Implement statutory requirements to include enhanced background checks, annual inspections, annual training and safety.	Implement statutory requirements to include enhanced background checks, annual inspections, annual training and safety.
CFS-42-19-00002-P	10/15/20	Permissible disclosure of records maintained by OCFS.	To amend existing regulations regarding the permissible disclosure of records by OCFS.
CFS-46-19-00002-P	11/12/20	Behavioral health services, elimination of room isolation and authority to operate de-escalation rooms	To implement standards for behavioral health services and the operation of de-escalation rooms and to eliminate room isolation
CFS-49-19-00001-P	12/03/20	Limits on executive compensation	To remove the soft cap limit on executive compensation
<b>CIVIL SERVICE, DEPARTMENT OF</b>			
CVS-06-19-00001-P	02/06/20	Jurisdictional Classification	To classify a position in the exempt class
CVS-25-19-00006-P	06/18/20	Jurisdictional Classification	To classify positions in the non-competitive class.
CVS-29-19-00013-P	07/16/20	Jurisdictional Classification	To classify positions in the exempt class and to delete positions from the non-competitive class
CVS-34-19-00011-P	08/20/20	Jurisdictional Classification	To delete positions from and classify positions in the non-competitive class
CVS-42-19-00009-P	10/15/20	Jurisdictional Classification	To classify positions in the exempt class
CVS-42-19-00010-P	10/15/20	Jurisdictional Classification	To classify positions in the exempt class
CVS-42-19-00011-P	10/15/20	Jurisdictional Classification	To classify a position in the exempt class
CVS-42-19-00012-P	10/15/20	Jurisdictional Classification	To delete positions from and classify positions in the non-competitive class
CVS-42-19-00013-P	10/15/20	Jurisdictional Classification	To delete positions from the non-competitive class
CVS-42-19-00014-P	10/15/20	Jurisdictional Classification	To classify a position in the exempt class
CVS-42-19-00015-P	10/15/20	Jurisdictional Classification	To classify a position in the exempt class
CVS-42-19-00016-P	10/15/20	Jurisdictional Classification	To classify a position in the exempt class
CVS-42-19-00017-P	10/15/20	Jurisdictional Classification	To delete a position from and classify a position in the exempt class

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>CIVIL SERVICE, DEPARTMENT OF</b>			
CVS-42-19-00018-P	10/15/20	Jurisdictional Classification	To classify a position in the non-competitive class
CVS-42-19-00019-P	10/15/20	Jurisdictional Classification	To classify positions in the non-competitive class
CVS-42-19-00020-P	10/15/20	Jurisdictional Classification	To classify positions in the non-competitive class
CVS-42-19-00021-P	10/15/20	Jurisdictional Classification	To classify positions in the non-competitive class
CVS-42-19-00022-P	10/15/20	Jurisdictional Classification	To classify positions in the non-competitive class
CVS-42-19-00023-P	10/15/20	Jurisdictional Classification	To classify positions in the non-competitive class
CVS-42-19-00024-P	10/15/20	Jurisdictional Classification	To delete positions from and classify positions in the non-competitive class
CVS-42-19-00025-P	10/15/20	Jurisdictional Classification	To delete positions from and classify positions in the exempt and non-competitive classes
CVS-42-19-00026-P	10/15/20	Jurisdictional Classification	To classify positions in the exempt class and to delete a position from and classify positions in the non-competitive class
CVS-42-19-00027-P	10/15/20	Jurisdictional Classification	To classify positions in the exempt and non-competitive classes
CVS-45-19-00003-P	11/05/20	Jurisdictional Classification	To classify a position in the non-competitive class
CVS-45-19-00004-P	11/05/20	Jurisdictional Classification	To classify a position in the exempt class
CVS-45-19-00005-P	11/05/20	Jurisdictional Classification	To delete positions from and classify a position in the non-competitive class
CVS-45-19-00006-P	11/05/20	Jurisdictional Classification	To delete positions from the non-competitive class
CVS-45-19-00007-P	11/05/20	Jurisdictional Classification	To delete a position from and classify a position in the exempt class and to delete positions from the non-competitive class
CVS-45-19-00008-P	11/05/20	Jurisdictional Classification	To delete positions from and classify a position in the labor class
CVS-45-19-00009-P	11/05/20	Jurisdictional Classification	To delete a position from and classify a position in the exempt class
CVS-51-19-00002-P	12/17/20	Jurisdictional Classification	To delete positions from and classify positions in the non-competitive class
CVS-51-19-00003-P	12/17/20	Jurisdictional Classification	To classify a position in the exempt class
CVS-51-19-00004-P	12/17/20	Jurisdictional Classification	To classify positions in the exempt class
CVS-51-19-00005-P	12/17/20	Jurisdictional Classification	To classify positions in the exempt class

**Action Pending Index****NYS Register/December 24, 2019**

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>CIVIL SERVICE, DEPARTMENT OF</b>			
CVS-51-19-00006-P	12/17/20	Jurisdictional Classification	To classify positions in the exempt class
CVS-51-19-00007-P	12/17/20	Jurisdictional Classification	To classify positions in the non-competitive class
CVS-51-19-00008-P	12/17/20	Jurisdictional Classification	To classify positions in the non-competitive class
CVS-51-19-00009-P	12/17/20	Jurisdictional Classification	To classify positions in the non-competitive class
CVS-51-19-00010-P	12/17/20	Jurisdictional Classification	To delete positions from the non-competitive class
CVS-51-19-00011-P	12/17/20	Jurisdictional Classification	To delete a position from and classify a position in the exempt class
CVS-51-19-00012-P	12/17/20	Jurisdictional Classification	To classify positions in the non-competitive class
CVS-51-19-00013-P	12/17/20	Jurisdictional Classification	To classify positions in the non-competitive class
CVS-51-19-00014-P	12/17/20	Jurisdictional Classification	To classify positions in the non-competitive class
<b>CORRECTION, STATE COMMISSION OF</b>			
CMC-35-19-00002-P	08/27/20	Disciplinary and administrative segregation of inmates in special housing.	Prohibit the segregation of vulnerable inmates, and to standardize allowable uses and duration of special housing segregation.
CMC-41-19-00002-EP	10/08/20	Necessary age for admission to an adult lockup	To ensure that individuals under 18 years old are not admitted to an adult lockup
<b>CORRECTIONS AND COMMUNITY SUPERVISION, DEPARTMENT OF</b>			
CCS-05-19-00006-RP	01/30/20	Standard Conditions of Release Parole Revocation Dispositions	Establish standard conditions of release and provide a workable structure for applying appropriate parole revocation penalties
CCS-21-19-00014-P	05/21/20	Adolescent Offender Facilities	To reclassify two existing correctional facilities to adolescent offender facilities.
CCS-35-19-00001-P	08/27/20	Special Housing Units	Revisions have been made in order to be in compliance with new laws regarding special housing units and solitary confinement use
CCS-50-19-00002-P	12/10/20	Raise the Age	To update each correctional facility's regulation as a direct result of the Raise the Age legislation
<b>CRIMINAL JUSTICE SERVICES, DIVISION OF</b>			
CJS-20-19-00003-P	05/14/20	Certified Instructors and Course Directors	Establish/maintain effective procedures governing certified instructors and course directors who deliver MPTC-approved courses

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>CRIMINAL JUSTICE SERVICES, DIVISION OF</b>			
CJS-30-19-00010-EP	07/23/20	Use of Force	Set forth use of force reporting and recordkeeping procedures
<b>ECONOMIC DEVELOPMENT, DEPARTMENT OF</b>			
EDV-43-19-00001-P	10/22/20	Empire State Commercial Production Credit Program	Create administrative procedures for all components of the Empire State Commercial Production Credit Program
<b>EDUCATION DEPARTMENT</b>			
EDU-52-18-00005-P	12/26/19	Annual professional performance reviews.	To extend the transition period for an additional year (until 2019-2020).
EDU-05-19-00008-RP	01/30/20	Protecting Personally Identifiable Information	To implement the provisions of Education Law section 2-d
EDU-17-19-00008-P	04/23/20	To require study in language acquisition and literacy development of English language learners in certain teacher preparation	To ensure that newly certified teachers enter the workforce fully prepared to serve our ELL population
EDU-27-19-00010-P	07/02/20	Substantially Equivalent Instruction for Nonpublic School Students	Provide guidance to local school authorities to assist them in fulfilling their responsibilities under the Compulsory Ed Law
EDU-31-19-00009-EP	07/30/20	Instructional Time for State Aid purposes	To provide school districts with additional flexibility when establishing their school calendars
EDU-39-19-00008-ERP	09/24/20	The Education, Experience, Examination and Endorsement Requirements for Licensure as an Architect	To more closely align New York's requirements for architects with national standards and to streamline the endorsement process.
EDU-39-19-00009-P	09/24/20	Requirements for Licensure as an Architect	To more closely align the Commissioner's Regulations with national standards for licensure as an architect.
EDU-39-19-00012-P	09/24/20	Building Condition Surveys and Visual and Periodic Inspections of Public School Buildings	To align the Commissioner's Regulations with amendments made to Education Law sections 409-9d, 409-e, and 3641.
EDU-43-19-00011-P	10/22/20	Addition of Subject Ares to the Limited Extension and SOCE for Certain Teachers of Students with Disabilities	To enable more qualified teachers of students with disabilities to seek the limited extension and SOCE
EDU-43-19-00012-EP	10/22/20	Annual Professional Performance Reviews of Classroom Teachers and Building Principals	Necessary to implement part YYY of chapter 59 of the Laws of 2019
EDU-43-19-00013-P	10/22/20	Requirements for Chiropractic Education Programs and Education Requirements for Licensure as a Chiropractor	To conform educational requirements for the profession of chiropractic to the national preprofessional education standards
EDU-47-19-00005-P	11/19/20	Physical Education Requirements for a Diploma and Transfer Credits for Students Earning Credit in an Educational Program.	To implement Raise the Age legislation pursuant to Part WWW of Chapter 59 of the Laws of 2017.
EDU-47-19-00006-EP	11/19/20	Permit physicians licensed in another state or territory to provide medical services to athletes and team personnel in New York	To align the Regulations of the Commissioner with Chapter 519 of the laws of 2018 and Chapter 199 of the Laws of 2019.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>EDUCATION DEPARTMENT</b>			
EDU-47-19-00007-EP	11/19/20	Profession of Registered Dental Assisting.	To conform the Regulations of the Commissioner with Chapter 390 of the laws of 2019.
EDU-52-19-00007-P	12/23/20	Update Provisions Relating to Pupil Transportation	To update provisions of the Commissioner's Regulations relating to pupil transportation.
EDU-52-19-00008-EP	12/23/20	Restricted License for Clinical Laboratory Technologist	Implement Chapter 227 of 2019 by adding toxicology to the category of restricted licenses for clinical laboratory technologists.
EDU-52-19-00009-EP	12/23/20	Continuing Education in the Profession of Public Accountancy	Implement the provisions of Chapter 413 of the Laws of 2018.
EDU-52-19-00010-EP	12/23/20	Duties and responsibilities of the counsel of the State Education Department.	To designate counsel as the deputy commissioner of education as specified in Education Law, section 101.
<b>ELECTIONS, STATE BOARD OF</b>			
SBE-22-19-00003-EP	05/28/20	Process for Early Voting	Establishing Process for Early Voting
SBE-35-19-00003-EP	08/27/20	Ballot Accountability Practices	Establishes additional ballot accountability procedures
<b>ENVIRONMENTAL CONSERVATION, DEPARTMENT OF</b>			
ENV-09-19-00015-RP	05/13/20	Set nitrogen oxide (NOx) emission rate limits for simple cycle and regenerative combustion turbines	Reduction of nitrogen oxide (NOx) emissions from simple cycle and regenerative combustion turbines
ENV-10-19-00003-P	05/13/20	Regulate volatile organic compounds (VOCs) in architectural and industrial maintenance (AIM) coatings	To set new and lower VOC limits for certain coating categories. Update categories and methods
ENV-18-19-00006-EP	04/30/20	Regulations governing commercial fishing and harvest of scup.	To revise regulations concerning the commercial harvest of scup in New York State waters.
ENV-24-19-00002-P	08/18/20	Hazardous Waste Management Regulations (FedReg5)	To amend regulations pertaining to hazardous waste management
ENV-27-19-00003-P	07/02/20	Black Bear hunting.	Expand bear hunting opportunities in Wildlife Management Unit 4W to reduce bear abundance.
ENV-36-19-00001-P	11/07/20	Waste Fuels	Update permit references, rule citations, monitoring, record keeping, reporting requirements, and incorporate federal standards.
ENV-36-19-00002-P	11/07/20	New Aftermarket Catalytic Converter (AMCC) standards	Prohibit sale of federal AMCCs and update existing AMCC record keeping and reporting requirements
ENV-36-19-00003-P	11/07/20	Stationary Combustion Installations	Update permit references, rule citations, monitoring, record keeping, reporting requirements, and lower emission standards.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>ENVIRONMENTAL CONSERVATION, DEPARTMENT OF</b>			
ENV-36-19-00014-P	11/19/20	Distributed generation sources located in New York City, Long Island and Westchester and Rockland counties	Establish emission control requirements for sources used in demand response programs or as price-responsive generation sources
ENV-37-19-00003-P	09/10/20	Clarifying determination of jurisdiction under the Endangered and Threatened Fish and Wildlife regulations	To improve the review of projects by removing some project types that are known not to cause harm from the review stream
ENV-38-19-00001-P	09/17/20	Animals dangerous to health or welfare	To expand the list of animals which pose a risk to health or welfare of the people of the state or indigenous fish and wildlife
ENV-39-19-00003-P	12/05/20	Part 219 applies to various types of incinerators and crematories operated in New York State.	This rule establishes emission limits and operating requirements for various types of incinerators.
ENV-42-19-00003-P	10/15/20	Amendments to Great Lakes sportfishery regulations in 6NYCRR Part 10	Proposed amendments are intended to improve high quality sportfisheries and associated economic benefits
ENV-43-19-00006-P	01/07/21	Class I and Class SD waters	To clarify best usages of Class I and SD waters were/are "secondary contact recreation and fishing" and "fishing," respectively
ENV-43-19-00010-P	01/06/21	Repeal and replace 6 NYCRR Part 622 and amend 6 NYCRR Part 624, Part 621 and Part 620	To incorporate procedural and legal developments, develop consistency & reflect current practice in DEC hearings
ENV-48-19-00008-P	01/26/21	Plastic Bag Reduction, Reuse and Recycling	The objectives of this rulemaking are to provide clarity to Titles 27 and 28 so that they can both be effectively implemented
<b>FINANCIAL SERVICES, DEPARTMENT OF</b>			
*DFS-17-16-00003-P	exempt	Plan of Conversion by Commercial Travelers Mutual Insurance Company	To convert a mutual accident and health insurance company to a stock accident and health insurance company
*DFS-25-18-00006-P	exempt	Plan of Conversion by Medical Liability Mutual Insurance Company	To convert a mutual property and casualty insurance company to a stock property and casualty insurance company
DFS-33-19-00004-P	08/13/20	Minimum Standards for Form, Content, and Sale of Health Insurance, Including Standards for Full and Fair Disclosure	To set forth minimum standards for the content of health insurance identification cards.
DFS-43-19-00017-P	10/22/20	INDEPENDENT DISPUTE RESOLUTION FOR EMERGENCY SERVICES AND SURPRISE BILLS	To require notices and consumer disclosure information related to surprise bills and bills for emergency service to be provided
DFS-44-19-00010-P	10/29/20	Superintendent's Regulations: Basic Banking Accounts	To amend the requirements of basic banking accounts in conformity with Chapter 260 of the Laws of 2019
DFS-44-19-00011-P	10/29/20	Principle-Based Reserving	To prescribe minimum principle-based valuation standards
DFS-47-19-00003-P	11/19/20	Banking Division Assessments	Set forth the basis for allocating costs and expenses attributable to the operation of the Banking Division for FSL assessments

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>FINANCIAL SERVICES, DEPARTMENT OF</b>			
DFS-48-19-00002-P	11/26/20	SUPERINTENDENT’S REGULATIONS: INFORMATION SUBJECT TO CONFIDENTIAL TREATMENT	Provide rules concerning publication or disclosure of information subject to confidential treatment
DFS-51-19-00015-P	12/17/20	Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure	Clarifying discriminatory activities prohibited by and coverages included within preventive care and screenings under the IL
<b>GAMING COMMISSION, NEW YORK STATE</b>			
SGC-40-19-00011-P	10/01/20	Remove obsolete reference to safety vest weight	To promote the integrity of racing and derive a reasonable return for government
SGC-40-19-00012-P	10/01/20	Add racetrack operator to terms defined in Thoroughbred rules	To promote the integrity of racing and derive a reasonable return for government
SGC-42-19-00004-P	10/15/20	Add racetrack operator to terms defined in harness racing rules	To promote the integrity of racing and derive a reasonable return for government
<b>GENERAL SERVICES, OFFICE OF</b>			
GNS-40-19-00005-P	10/01/20	Facility Use	To add “plastic knuckles” and remove “gravity knife” from the definition of “deadly weapon”
<b>HEALTH, DEPARTMENT OF</b>			
*HLT-14-94-00006-P	exempt	Payment methodology for HIV/AIDS outpatient services	To expand the current payment to incorporate pricing for services
HLT-51-18-00018-P	12/19/19	New requirements for Annual Registration of Licensed Home Care Services Agencies	To amend the regulations for licensed home care services agencies for the annual registration requirements of the agency
HLT-30-19-00006-P	07/23/20	Maximum Contaminant Levels (MCLs)	Incorporating MCLs for perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS) and 1,4-dioxane.
HLT-36-19-00005-EP	09/03/20	School Immunization Requirements	To be consistent with national immunization regulations and guidelines and to define “may be detrimental to the child’s health”.
HLT-36-19-00006-P	09/03/20	Limits on Executive Compensation	Removes “Soft Cap” prohibition on covered executive salaries.
HLT-40-19-00002-EP	10/01/20	Required Signage Warning Against the Dangers of Illegal Products	To require sellers of legal e-liquids and e-cigarette products to post warning signs regarding illegal products
HLT-40-19-00004-P	10/01/20	Drug Take Back	To implement the State’s drug take back program to provide for the safe disposal of drugs
HLT-43-19-00005-P	10/22/20	Transitional Adult Home Admission Standards for Individuals with Serious Mental Illness	Delineate a clear pre-admissions process for determining whether a prospective resident is a person with serious mental illness
HLT-45-19-00001-P	11/05/20	Medical Use of Marihuana	To allow NYS hemp growers to sell hemp-derived cannabidiol to the Registered Organizations to reduce the cost of manufacturing.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>HEALTH, DEPARTMENT OF</b>			
HLT-45-19-00002-P	11/05/20	Licensed Home Care Services Agencies (LHCASAs)	To implement changes to public need & financial feasibility review for applications for HCSAs licensure & change of ownership.
HLT-46-19-00003-P	11/12/20	Tanning Facilities	To prohibit the use of indoor tanning facilities by individuals less than 18 years of age
HLT-47-19-00008-P	11/19/20	Hospital Medical Staff - Limited Permit Holders	To repeal extra years of training required for limited permit holders to work in New York State hospitals.
HLT-47-19-00009-P	11/19/20	Empire Clinical Research Investigator Program (ECRIP)	To expand the types of & change the time frames for past research grants that qualify staff to supervise the ECRIP project.
HLT-48-19-00003-EP	11/26/20	Secondary Syringe Exchange in New York State	To reduce the spread of blood-borne pathogens, to reduce or eliminate other harms associated with contaminated syringes.
HLT-51-19-00001-P	12/17/20	Women, Infants and Children (WIC) Program	To support implementation of eWIC; clarify rules for violations, penalties & hearings & conform vendor authorization criteria.
<b>HOUSING AND COMMUNITY RENEWAL, DIVISION OF</b>			
HCR-21-19-00019-P	07/21/20	Low-Income Housing Qualified Allocation Plan	To amend definitions, threshold criteria and application scoring for the allocation of low-income housing tax credits.
HCR-48-19-00001-P	11/26/20	The subject of these amendments is the change in the location of DHCR's Office Of Legal Affairs (OLA).	The purpose is to inform the public of the change in DHCR's Office of Legal Affairs' location.
<b>HOUSING FINANCE AGENCY</b>			
HFA-21-19-00020-P	07/21/20	Low-Income Housing Qualified Allocation Plan	To amend definitions, threshold criteria and application scoring for the allocation of low-income housing tax credits
<b>HUMAN RIGHTS, DIVISION OF</b>			
HRT-27-19-00002-P	07/02/20	Gender Identity or Expression Discrimination	To conform the Division's regulations with Executive Law as amended by Chapter 8 of the Laws of New York 2019.
<b>LABOR, DEPARTMENT OF</b>			
LAB-46-19-00004-P	11/12/20	NY State Public Employees Occupational Safety and Health Standards	To incorporate by reference updates to OSHA standards into the NY State Public Employee Occupational Safety and Health Standards
<b>LONG ISLAND POWER AUTHORITY</b>			
*LPA-08-01-00003-P	exempt	Pole attachments and related matters	To approve revisions to the authority's tariff
*LPA-41-02-00005-P	exempt	Tariff for electric service	To revise the tariff for electric service

## Action Pending Index

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Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>LONG ISLAND POWER AUTHORITY</b>			
*LPA-04-06-00007-P	..... exempt	Tariff for electric service	To adopt provisions of a ratepayer protection plan
*LPA-03-10-00004-P	..... exempt	Residential late payment charges	To extend the application of late payment charges to residential customers
*LPA-15-18-00013-P	..... exempt	Outdoor area lighting	To add an option and pricing for efficient LED lamps to the Authority's outdoor area lighting
*LPA-37-18-00013-P	..... exempt	The net energy metering provisions of the Authority's Tariff for Electric Service	To implement PSC guidance increasing eligibility for value stack compensation to larger projects
*LPA-37-18-00017-P	..... exempt	The treatment of electric vehicle charging in the Authority's Tariff for Electric Service.	To effectuate the outcome of the Public Service Commission's proceeding on electric vehicle supply equipment.
*LPA-37-18-00018-P	..... exempt	The treatment of energy storage in the Authority's Tariff for Electric Service.	To effectuate the outcome of the Public Service Commission's proceeding on the NY Energy Storage Roadmap.
LPA-37-19-00005-P	..... exempt	The Authority's annual budget, as reflected in the rates and charges in the Tariff for Electric Service	To update the Tariff to implement the Authority's annual budget and corresponding rate adjustments
LPA-37-19-00006-P	..... exempt	The modification of the SGIP to clarify and reflect updates to the State's Standardized Interconnection Requirements (SIR)	To be consistent with the State's SIR and related orders
LPA-37-19-00007-P	..... exempt	The standard rates for pole attachments of the Authority's Tariff for Electric Service	To update the Authority's standard rates for pole attachments in accordance with recent Public Service Commission action
LPA-47-19-00017-P	..... exempt	VDER, net metering, and community distributed generation	To update the Authority's tariff for consistency with the Public Service Commission, Department of Public Service, and CLCPA.
<b>MENTAL HEALTH, OFFICE OF</b>			
OMH-43-19-00008-P	..... 10/22/20	Personalized Recovery Oriented Services (PROS)	To Allow PROS participants to receive Clinic Treatment from an Article 31 Clinic operated by the same agency
OMH-46-19-00005-P	..... 11/12/20	Definition of "Case record, clinical record, medical record or patient record"	To clarify that the agency does not consider the provision to apply to the definition of "record" as set forth in MHL 9.01
OMH-47-19-00001-P	..... 11/19/20	Limits on Executive Compensation	To eliminate "soft cap" restrictions on compensation.
<b>METROPOLITAN TRANSPORTATION AGENCY</b>			
MTA-23-19-00006-EP	..... 06/04/20	Debarment of contractors	To comply with Public Authorities Law, section 1279-h, which requires the MTA to establish a debarment process for contractors

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>NIAGARA FALLS WATER BOARD</b>			
*NFW-04-13-00004-EP	..... exempt	Adoption of Rates, Fees and Charges	To pay for the increased costs necessary to operate, maintain and manage the system, and to achieve covenants with bondholders
*NFW-13-14-00006-EP	..... exempt	Adoption of Rates, Fees and Charges	To pay for increased costs necessary to operate, maintain and manage the system and to achieve covenants with the bondholders
NFW-01-19-00019-EP	..... exempt	Adoption of Rates, Fees, and Charges	To pay for increased costs necessary to operate, maintain, and manage the system, and to meet covenants with the bondholders
<b>OGDENSBURG BRIDGE AND PORT AUTHORITY</b>			
*OBA-33-18-00019-P	..... exempt	Increase in Bridge Toll Structure	To increase bridge toll revenue in order to become financially self-supporting. Our bridge operations are resulting in deficit.
OBA-07-19-00019-P	..... exempt	Increase in Bridge Toll Structure	To increase bridge toll revenue in order to become financially self-supporting. Our bridge operations are resulting in deficit
<b>POWER AUTHORITY OF THE STATE OF NEW YORK</b>			
*PAS-01-10-00010-P	..... exempt	Rates for the sale of power and energy	Update ECSB Programs customers' service tariffs to streamline them/include additional required information
PAS-42-19-00008-P	..... exempt	Rates for the Sale of Power and Energy	To align rates and costs
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-09-99-00012-P	..... exempt	Transfer of books and records by Citizens Utilities Company	To relocate Ogden Telephone Company's books and records out-of-state
*PSC-15-99-00011-P	..... exempt	Electronic tariff by Woodcliff Park Corp.	To replace the company's current tariff with an electronic tariff
*PSC-12-00-00001-P	..... exempt	Winter bundled sales service election date by Central Hudson Gas & Electric Corporation	To revise the date
*PSC-44-01-00005-P	..... exempt	Annual reconciliation of gas costs by Corning Natural Gas Corporation	To authorize the company to include certain gas costs
*PSC-07-02-00032-P	..... exempt	Uniform business practices	To consider modification
*PSC-36-03-00010-P	..... exempt	Performance assurance plan by Verizon New York	To consider changes
*PSC-40-03-00015-P	..... exempt	Receipt of payment of bills by St. Lawrence Gas Company	To revise the process
*PSC-41-03-00010-P	..... exempt	Annual reconciliation of gas expenses and gas cost recoveries	To consider filings of various LDCs and municipalities
*PSC-41-03-00011-P	..... exempt	Annual reconciliation of gas expenses and gas cost recoveries	To consider filings of various LDCs and municipalities

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-44-03-00009-P	..... exempt	Retail access data between jurisdictional utilities	To accommodate changes in retail access market structure or commission mandates
*PSC-02-04-00008-P	..... exempt	Delivery rates for Con Edison's customers in New York City and Westchester County by the City of New York	To rehear the Nov. 25, 2003 order
*PSC-06-04-00009-P	..... exempt	Transfer of ownership interest by SCS Energy LLC and AE Investors LLC	To transfer interest in Steinway Creek Electric Generating Company LLC to AE Investors LLC
*PSC-10-04-00005-P	..... exempt	Temporary protective order	To consider adopting a protective order
*PSC-10-04-00008-P	..... exempt	Interconnection agreement between Verizon New York Inc. and VIC-RMTS-DC, L.L.C. d/b/a Verizon Avenue	To amend the agreement
*PSC-14-04-00008-P	..... exempt	Submetering of natural gas service to industrial and commercial customers by Hamburg Fairgrounds	To submeter gas service to commercial customers located at the Buffalo Speedway
*PSC-15-04-00022-P	..... exempt	Submetering of electricity by Glenn Gardens Associates, L.P.	To permit submetering at 175 W. 87th St., New York, NY
*PSC-21-04-00013-P	..... exempt	Verizon performance assurance plan by Metropolitan Telecommunications	To clarify the appropriate performance level
*PSC-22-04-00010-P	..... exempt	Approval of new types of electricity meters by Powell Power Electric Company	To permit the use of the PE-1250 electronic meter
*PSC-22-04-00013-P	..... exempt	Major gas rate increase by Consolidated Edison Company of New York, Inc.	To increase annual gas revenues
*PSC-22-04-00016-P	..... exempt	Master metering of water by South Liberty Corporation	To waive the requirement for installation of separate water meters
*PSC-25-04-00012-P	..... exempt	Interconnection agreement between Frontier Communications of Ausable Valley, Inc., et al. and Sprint Communications Company, L.P.	To amend the agreement
*PSC-27-04-00008-P	..... exempt	Interconnection agreement between Verizon New York Inc. and various Verizon wireless affiliates	To amend the agreement
*PSC-27-04-00009-P	..... exempt	Interconnection agreement between Verizon New York Inc. and various Verizon wireless affiliates	To amend the agreement
*PSC-28-04-00006-P	..... exempt	Approval of loans by Dunkirk & Fredonia Telephone Company and Cassadaga Telephone Corporation	To authorize participation in the parent corporation's line of credit
*PSC-31-04-00023-P	..... exempt	Distributed generation service by Consolidated Edison Company of New York, Inc.	To provide an application form
*PSC-34-04-00031-P	..... exempt	Flat rate residential service by Emerald Green Lake Louise Marie Water Company, Inc.	To set appropriate level of permanent rates
*PSC-35-04-00017-P	..... exempt	Application form for distributed generation by Orange and Rockland Utilities, Inc.	To establish a new supplementary application form for customers

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-43-04-00016-P	..... exempt	Accounts receivable by Rochester Gas and Electric Corporation	To include in its tariff provisions for the purchase of ESCO accounts receivable
*PSC-46-04-00012-P	..... exempt	Service application form by Consolidated Edison Company of New York, Inc.	To revise the form and make housekeeping changes
*PSC-46-04-00013-P	..... exempt	Rules and guidelines governing installation of metering equipment	To establish uniform statewide business practices
*PSC-02-05-00006-P	..... exempt	Violation of the July 22, 2004 order by Dutchess Estates Water Company, Inc.	To consider imposing remedial actions against the company and its owners, officers and directors
*PSC-09-05-00009-P	..... exempt	Submetering of natural gas service by Hamlet on Olde Oyster Bay	To consider submetering of natural gas to a commercial customer
*PSC-14-05-00006-P	..... exempt	Request for deferred accounting authorization by Freeport Electric Inc.	To defer expenses beyond the end of the fiscal year
*PSC-18-05-00009-P	..... exempt	Marketer Assignment Program by Consolidated Edison Company of New York, Inc.	To implement the program
*PSC-20-05-00028-P	..... exempt	Delivery point aggregation fee by Allied Frozen Storage, Inc.	To review the calculation of the fee
*PSC-25-05-00011-P	..... exempt	Metering, balancing and cashout provisions by Central Hudson Gas & Electric Corporation	To establish provisions for gas customers taking service under Service Classification Nos. 8, 9 and 11
*PSC-27-05-00018-P	..... exempt	Annual reconciliation of gas costs by New York State Electric & Gas Corporation	To consider the manner in which the gas cost incentive mechanism has been applied
*PSC-41-05-00013-P	..... exempt	Annual reconciliation of gas expenses and gas cost recoveries by local distribution companies and municipalities	To consider the filings
*PSC-45-05-00011-P	..... exempt	Treatment of lost and unaccounted gas costs by Corning Natural Gas Corporation	To defer certain costs
*PSC-46-05-00015-P	..... exempt	Sale of real and personal property by the Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and Steel Arrow, LLC	To consider the sale
*PSC-47-05-00009-P	..... exempt	Transferral of gas supplies by Corning Natural Gas Corporation	To approve the transfer
*PSC-50-05-00008-P	..... exempt	Long-term debt by Saratoga Glen Hollow Water Supply Corp.	To obtain long-term debt
*PSC-04-06-00024-P	..... exempt	Transfer of ownership interests by Mirant NY-Gen LLC and Orange and Rockland Utilities, Inc.	To approve of the transfer
*PSC-06-06-00015-P	..... exempt	Gas curtailment policies and procedures	To examine the manner and extent to which gas curtailment policies and procedures should be modified and/or established
*PSC-07-06-00009-P	..... exempt	Modification of the current Environmental Disclosure Program	To include an attributes accounting system

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-22-06-00019-P	..... exempt	Hourly pricing by National Grid	To assess the impacts
*PSC-22-06-00020-P	..... exempt	Hourly pricing by New York State Electric & Gas Corporation	To assess the impacts
*PSC-22-06-00021-P	..... exempt	Hourly pricing by Rochester Gas & Electric Corporation	To assess the impacts
*PSC-22-06-00022-P	..... exempt	Hourly pricing by Consolidated Edison Company of New York, Inc.	To assess the impacts
*PSC-22-06-00023-P	..... exempt	Hourly pricing by Orange and Rockland Utilities, Inc.	To assess the impacts
*PSC-24-06-00005-EP	..... exempt	Supplemental home energy assistance benefits	To extend the deadline to Central Hudson's low-income customers
*PSC-25-06-00017-P	..... exempt	Purchased power adjustment by Massena Electric Department	To revise the method of calculating the purchased power adjustment and update the factor of adjustment
*PSC-34-06-00009-P	..... exempt	Inter-carrier telephone service quality standards and metrics by the Carrier Working Group	To incorporate appropriate modifications
*PSC-37-06-00015-P	..... exempt	Procedures for estimation of customer bills by Rochester Gas and Electric Corporation	To consider estimation procedures
*PSC-37-06-00017-P	..... exempt	Procedures for estimation of customer bills by Rochester Gas and Electric Corporation	To consider estimation procedures
*PSC-43-06-00014-P	..... exempt	Electric delivery services by Strategic Power Management, Inc.	To determine the proper mechanism for the rate-recovery of costs
*PSC-04-07-00012-P	..... exempt	Petition for rehearing by Orange and Rockland Utilities, Inc.	To clarify the order
*PSC-06-07-00015-P	..... exempt	Meter reading and billing practices by Central Hudson Gas & Electric Corporation	To continue current meter reading and billing practices for electric service
*PSC-06-07-00020-P	..... exempt	Meter reading and billing practices by Central Hudson Gas & Electric Corporation	To continue current meter reading and billing practices for gas service
*PSC-11-07-00010-P	..... exempt	Investigation of the electric power outages by the Consolidated Edison Company of New York, Inc.	To implement the recommendations in the staff's investigation
*PSC-11-07-00011-P	..... exempt	Storm-related power outages by Consolidated Edison Company of New York, Inc.	To modify the company's response to power outages, the timing for any such changes and other related matters
*PSC-17-07-00008-P	..... exempt	Interconnection agreement between Verizon New York Inc. and BridgeCom International, Inc.	To amend the agreement
*PSC-18-07-00010-P	..... exempt	Existing electric generating stations by Independent Power Producers of New York, Inc.	To repower and upgrade existing electric generating stations owned by Rochester Gas and Electric Corporation
*PSC-20-07-00016-P	..... exempt	Tariff revisions and making rates permanent by New York State Electric & Gas Corporation	To seek rehearing

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-21-07-00007-P	..... exempt	Natural Gas Supply and Acquisition Plan by Corning Natural Gas Corporation	To revise the rates, charges, rules and regulations for gas service
*PSC-22-07-00015-P	..... exempt	Demand Side Management Program by Consolidated Edison Company of New York, Inc.	To recover incremental program costs and lost revenue
*PSC-23-07-00022-P	..... exempt	Supplier, transportation, balancing and aggregation service by National Fuel Gas Distribution Corporation	To explicitly state in the company's tariff that the threshold level of elective upstream transmission capacity is a maximum of 112,600 Dth/day of marketer-provided upstream capacity
*PSC-24-07-00012-P	..... exempt	Gas Efficiency Program by the City of New York	To consider rehearing a decision establishing a Gas Efficiency Program
*PSC-39-07-00017-P	..... exempt	Gas bill issuance charge by New York State Electric & Gas Corporation	To create a gas bill issuance charge unbundled from delivery rates
*PSC-41-07-00009-P	..... exempt	Submetering of electricity rehearing	To seek reversal
*PSC-42-07-00012-P	..... exempt	Energy efficiency program by Orange and Rockland Utilities, Inc.	To consider any energy efficiency program for Orange and Rockland Utilities, Inc.'s electric service
*PSC-42-07-00013-P	..... exempt	Revenue decoupling by Orange and Rockland Utilities, Inc.	To consider a revenue decoupling mechanism for Orange and Rockland Utilities, Inc.
*PSC-45-07-00005-P	..... exempt	Customer incentive programs by Orange and Rockland Utilities, Inc.	To establish a tariff provision
*PSC-02-08-00006-P	..... exempt	Additional central office codes in the 315 area code region	To consider options for making additional codes
*PSC-03-08-00006-P	..... exempt	Rehearing of the accounting determinations	To grant or deny a petition for rehearing of the accounting determinations
*PSC-04-08-00010-P	..... exempt	Granting of easement rights on utility property by Central Hudson Gas & Electric Corporation	To grant easement rights to Millennium Pipeline Company, L.L.C.
*PSC-04-08-00012-P	..... exempt	Marketing practices of energy service companies by the Consumer Protection Board and New York City Department of Consumer Affairs	To consider modifying the commission's regulation over marketing practices of energy service companies
*PSC-08-08-00016-P	..... exempt	Transfer of ownership by Entergy Nuclear Fitzpatrick LLC, et al.	To consider the transfer
*PSC-12-08-00019-P	..... exempt	Extend the provisions of the existing electric rate plan by Rochester Gas and Electric Corporation	To consider the request
*PSC-12-08-00021-P	..... exempt	Extend the provisions of the existing gas rate plan by Rochester Gas and Electric Corporation	To consider the request
*PSC-13-08-00011-P	..... exempt	Waiver of commission policy and NYSEG tariff by Turner Engineering, PC	To grant or deny Turner's petition
*PSC-13-08-00012-P	..... exempt	Voltage drops by New York State Electric & Gas Corporation	To grant or deny the petition

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-23-08-00008-P	..... exempt	Petition requesting rehearing and clarification of the commission's April 25, 2008 order denying petition of public utility law project	To consider whether to grant or deny, in whole or in part, the May 7, 2008 Public Utility Law Project (PULP) petition for rehearing and clarification of the commission's April 25, 2008 order denying petition of Public Utility Law Project
*PSC-25-08-00007-P	..... exempt	Policies and procedures regarding the selection of regulatory proposals to meet reliability needs	To establish policies and procedures regarding the selection of regulatory proposals to meet reliability needs
*PSC-25-08-00008-P	..... exempt	Report on Callable Load Opportunities	Rider U report assessing callable load opportunities in New York City and Westchester County during the next 10 years
*PSC-28-08-00004-P	..... exempt	Con Edison's procedure for providing customers access to their account information	To consider Con Edison's implementation plan and timetable for providing customers access to their account information
*PSC-31-08-00025-P	..... exempt	Recovery of reasonable DRS costs from the cost mitigation reserve (CMR)	To authorize recovery of the DRS costs from the CMR
*PSC-32-08-00009-P	..... exempt	The ESCO referral program for KEDNY to be implemented by October 1, 2008	To approve, reject or modify, in whole or in part, KEDNY's recommended ESCO referral program
*PSC-33-08-00008-P	..... exempt	Noble Allegany's request for lightened regulation	To consider Noble Allegany's request for lightened regulation as an electric corporation
*PSC-36-08-00019-P	..... exempt	Land Transfer in the Borough of Manhattan, New York	To consider petition for transfer of real property to NYPH
*PSC-39-08-00010-P	..... exempt	RG&E's economic development plan and tariffs	Consideration of the approval of RG&E's economic development plan and tariffs
*PSC-40-08-00010-P	..... exempt	Loans from regulated company to its parent	To determine if the cash management program resulting in loans to the parent should be approved
*PSC-41-08-00009-P	..... exempt	Transfer of control of cable TV franchise	To determine if the transfer of control of Margaretville's cable TV subsidiary should be approved
*PSC-43-08-00014-P	..... exempt	Annual Reconciliation of Gas Expenses and Gas Cost Recoveries	The filings of various LDCs and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries
*PSC-46-08-00008-P	..... exempt	Property transfer in the Village of Avon, New York	To consider a petition for the transfer of street lighting and attached equipment to the Village of Avon, New York
*PSC-46-08-00010-P	..... exempt	A transfer of indirect ownership interests in nuclear generation facilities	Consideration of approval of a transfer of indirect ownership interests in nuclear generation facilities
*PSC-46-08-00014-P	..... exempt	The attachment of cellular antennae to an electric transmission tower	To approve, reject or modify the request for permission to attach cellular antennae to an electric transmission tower
*PSC-48-08-00005-P	..... exempt	A National Grid high efficiency gas heating equipment rebate program	To expand eligibility to customers converting from oil to natural gas

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-48-08-00008-P	..... exempt	Petition for the master metering and submetering of electricity	To consider the request of Bay City Metering, to master meter & submeter electricity at 345 E. 81st St., New York, New York
*PSC-48-08-00009-P	..... exempt	Petition for the submetering of electricity	To consider the request of PCV/ST to submeter electricity at Peter Cooper Village & Stuyvesant Town, New York, New York
*PSC-50-08-00018-P	..... exempt	Market Supply Charge	A study on the implementation of a revised Market Supply Charge
*PSC-51-08-00006-P	..... exempt	Commission's October 27, 2008 Order on Future of Retail Access Programs in Case 07-M-0458	To consider a Petition for rehearing of the Commission's October 27, 2008 Order in Case 07-M-0458
*PSC-51-08-00007-P	..... exempt	Commission's October 27, 2008 Order in Cases 98-M-1343, 07-M-1514 and 08-G-0078	To consider Petitions for rehearing of the Commission's October 27, 2008 Order in Cases 98-M-1343, 07-M-1514 and 08-G-0078
*PSC-53-08-00011-P	..... exempt	Use of deferred Rural Telephone Bank funds	To determine if the purchase of a softswitch by Hancock is an appropriate use of deferred Rural Telephone Bank funds
*PSC-53-08-00012-P	..... exempt	Transfer of permanent and temporary easements at 549-555 North Little Tor Road, New City, NY	Transfer of permanent and temporary easements at 549-555 North Little Tor Road, New City, NY
*PSC-53-08-00013-P	..... exempt	To transfer common stock and ownership	To consider transfer of common stock and ownership
*PSC-01-09-00015-P	..... exempt	FCC decision to redefine service area of Citizens/Frontier	Review and consider FCC proposed redefinition of Citizens/Frontier service area
*PSC-02-09-00010-P	..... exempt	Competitive classification of independent local exchange company, and regulatory relief appropriate thereto	To determine if Chazy & Westport Telephone Corporation more appropriately belongs in scenario 1 rather than scenario 2
*PSC-05-09-00008-P	..... exempt	Revenue allocation, rate design, performance metrics, and other non-revenue requirement issues	To consider any remaining non-revenue requirement issues related to the Company's May 9, 2008 tariff filing
*PSC-05-09-00009-P	..... exempt	Numerous decisions involving the steam system including cost allocation, energy efficiency and capital projects	To consider the long term impacts on steam rates and on public policy of various options concerning the steam system
*PSC-06-09-00007-P	..... exempt	Interconnection of the networks between Frontier Comm. and WVT Communications for local exchange service and exchange access	To review the terms and conditions of the negotiated agreement between Frontier Comm. and WVT Comm.
*PSC-07-09-00015-P	..... exempt	Transfer certain utility assets located in the Town of Montgomery from plant held for future use to non-utility property	To consider the request to transfer certain utility assets located in the Town of Montgomery to non-utility assets
*PSC-07-09-00017-P	..... exempt	Request for authorization to defer the incremental costs incurred in the restoration work resulting from the ice storm	To allow the company to defer the incremental costs incurred in the restoration work resulting from the ice storm
*PSC-07-09-00018-P	..... exempt	Whether to permit the submetering of natural gas service to an industrial and commercial customer at Cooper Union, New York, NY	To consider the request of Cooper Union, to submeter natural gas at 41 Cooper Square, New York, New York

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-12-09-00010-P	..... exempt	Charges for commodity	To charge customers for commodity costs
*PSC-12-09-00012-P	..... exempt	Charges for commodity	To charge customers for commodity costs
*PSC-13-09-00008-P	..... exempt	Options for making additional central office codes available in the 718/347 numbering plan area	To consider options for making additional central office codes available in the 718/347 numbering plan area
*PSC-14-09-00014-P	..... exempt	The regulation of revenue requirements for municipal utilities by the Public Service Commission	To determine whether the regulation of revenue requirements for municipal utilities should be modified
*PSC-16-09-00010-P	..... exempt	Petition for the submetering of electricity	To consider the request of AMPS on behalf of Park Imperial to submeter electricity at 230 W. 56th Street, in New York, New York
*PSC-16-09-00020-P	..... exempt	Whether SUNY's core accounts should be exempt from the mandatory assignment of local distribution company (LDC) capacity	Whether SUNY's core accounts should be exempt from the mandatory assignment of local distribution company (LDC) capacity
*PSC-17-09-00010-P	..... exempt	Whether to permit the use of Elster REX2 solid state electric meter for use in residential and commercial accounts	To permit electric utilities in New York State to use the Elster REX2
*PSC-17-09-00011-P	..... exempt	Whether Brooklyn Navy Yard Cogeneration Partners, L.P. should be reimbursed by Con Edison for past and future use taxes	Whether Brooklyn Navy Yard Cogeneration Partners, L.P. should be reimbursed by Con Edison for past and future use taxes
*PSC-17-09-00012-P	..... exempt	Petition for the submetering of gas at commercial property	To consider the request of Turner Construction, to submeter natural gas at 550 Short Ave., & 10 South St., Governors Island, NY
*PSC-17-09-00014-P	..... exempt	Benefit-cost framework for evaluating AMI programs prepared by the DPS Staff	To consider a benefit-cost framework for evaluating AMI programs prepared by the DPS Staff
*PSC-17-09-00015-P	..... exempt	The construction of a tower for wireless antennas on land owned by National Grid	To approve, reject or modify the petition to build a tower for wireless antennas in the Town of Onondaga
*PSC-18-09-00012-P	..... exempt	Petition for rehearing of Order approving the submetering of electricity	To consider the request of Frank Signore to rehear petition to submeter electricity at One City Place in White Plains, New York
*PSC-18-09-00013-P	..... exempt	Petition for the submetering of electricity	To consider the request of Living Opportunities of DePaul to submeter electricity at E. Main St. located in Batavia, New York
*PSC-18-09-00017-P	..... exempt	Approval of an arrangement for attachment of wireless antennas to the utility's transmission facilities in the City of Yonkers	To approve, reject or modify the petition for the existing wireless antenna attachment to the utility's transmission tower
*PSC-20-09-00016-P	..... exempt	The recovery of, and accounting for, costs associated with the Companies' advanced metering infrastructure (AMI) pilots etc	To consider a filing of the Companies as to the recovery of, and accounting for, costs associated with it's AMI pilots etc
*PSC-20-09-00017-P	..... exempt	The recovery of, and accounting for, costs associated with CHG&E's AMI pilot program	To consider a filing of CHG&E as to the recovery of, and accounting for, costs associated with it's AMI pilot program

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<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-22-09-00011-P	..... exempt	Cost allocation for Consolidated Edison's East River Repowering Project	To determine whether any changes are warranted in the cost allocation of Consolidated Edison's East River Repowering Project
*PSC-25-09-00005-P	..... exempt	Whether to grant, deny, or modify, in whole or in part, the petition	Whether to grant, deny, or modify, in whole or in part, the petition
*PSC-25-09-00006-P	..... exempt	Electric utility implementation plans for proposed web based SIR application process and project status database	To determine if the proposed web based SIR systems are adequate and meet requirements needed for implementation
*PSC-25-09-00007-P	..... exempt	Electric rates for Consolidated Edison Company of New York, Inc	Consider a Petition for Rehearing filed by Consolidated Edison Company of New York, Inc
*PSC-27-09-00011-P	..... exempt	Interconnection of the networks between Vernon and tw telecom of new york l.p. for local exchange service and exchange access.	To review the terms and conditions of the negotiated agreement between Vernon and tw telecom of new york l.p.
*PSC-27-09-00014-P	..... exempt	Billing and payment for energy efficiency measures through utility bill	To promote energy conservation
*PSC-27-09-00015-P	..... exempt	Interconnection of the networks between Oriskany and tw telecom of new york l.p. for local exchange service and exchange access	To review the terms and conditions of the negotiated agreement between Oriskany and tw telecom of new york l.p.
*PSC-29-09-00011-P	..... exempt	Consideration of utility compliance filings	Consideration of utility compliance filings
*PSC-32-09-00009-P	..... exempt	Cost allocation for Consolidated Edison's East River Repowering Project	To determine whether any changes are warranted in the cost allocation of Consolidated Edison's East River Repowering Project
*PSC-34-09-00016-P	..... exempt	Recommendations made in the Management Audit Final Report	To consider whether to take action or recommendations contained in the Management Audit Final Report
*PSC-34-09-00017-P	..... exempt	To consider the transfer of control of Plattsburgh Cablevision, Inc. d/b/a Charter Communications to CH Communications, LLC	To allow the Plattsburgh Cablevision, Inc. to distribute its equity interest in CH Communications, LLC
*PSC-36-09-00008-P	..... exempt	The increase in the non-bypassable charge implemented by RG&E on June 1, 2009	Considering exemptions from the increase in the non-bypassable charge implemented by RG&E on June 1, 2009
*PSC-37-09-00015-P	..... exempt	Sale of customer-generated steam to the Con Edison steam system	To establish a mechanism for sale of customer-generated steam to the Con Edison steam system
*PSC-37-09-00016-P	..... exempt	Applicability of electronic signatures to Deferred Payment Agreements	To determine whether electronic signatures can be accepted for Deferred Payment Agreements
*PSC-39-09-00015-P	..... exempt	Modifications to the \$5 Bill Credit Program	Consideration of petition of National Grid to modify the Low Income \$5 Bill Credit Program
*PSC-39-09-00018-P	..... exempt	The offset of deferral balances with Positive Benefit Adjustments	To consider a petition to offset deferral balances with Positive Benefit Adjustments
*PSC-40-09-00013-P	..... exempt	Uniform System of Accounts - request for deferral and amortization of costs	To consider a petition to defer and amortize costs

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-51-09-00029-P	..... exempt	Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible ESCOs	To revise the uniform Electronic Data Interchange Standards and business practices to incorporate a contest period
*PSC-51-09-00030-P	..... exempt	Waiver or modification of Capital Expenditure condition of merger	To allow the companies to expend less funds for capital improvement than required by the merger
*PSC-52-09-00006-P	..... exempt	ACE's petition for rehearing for an order regarding generator-specific energy deliverability study methodology	To consider whether to change the Order Prescribing Study Methodology
*PSC-52-09-00008-P	..... exempt	Approval for the New York Independent System Operator, Inc. to incur indebtedness and borrow up to \$50,000,000	To finance the renovation and construction of the New York Independent System Operator, Inc.'s power control center facilities
*PSC-05-10-00008-P	..... exempt	Petition for the submetering of electricity	To consider the request of University Residences - Rochester, LLC to submeter electricity at 220 John Street, Henrietta, NY
*PSC-05-10-00015-P	..... exempt	Petition for the submetering of electricity	To consider the request of 243 West End Avenue Owners Corp. to submeter electricity at 243 West End Avenue, New York, NY
*PSC-06-10-00022-P	..... exempt	The Commission's Order of December 17, 2009 related to redevelopment of Consolidated Edison's Hudson Avenue generating facility	To reconsider the Commission's Order of December 17, 2009 related to redevelopment of the Hudson Avenue generating facility
*PSC-07-10-00009-P	..... exempt	Petition to revise the Uniform Business Practices	To consider the RESA petition to allow rescission of a customer request to return to full utility service
*PSC-08-10-00007-P	..... exempt	Whether to grant, deny, or modify , in whole or in part, the rehearing petition filed in Case 06-E-0847	Whether to grant, deny, or modify , in whole or in part, the rehearing petition filed in Case 06-E-0847
*PSC-08-10-00009-P	..... exempt	Consolidated Edison of New York, Inc. energy efficiency programs	To modify approved energy efficiency programs
*PSC-12-10-00015-P	..... exempt	Recommendations made by Staff intended to enhance the safety of Con Edison's gas operations	To require that Con Edison implement the Staff recommendations intended to enhance the safety of Con Edison's gas operations
*PSC-14-10-00010-P	..... exempt	Petition for the submetering of electricity	To consider the request of 61 Jane Street Owners Corporation to submeter Electricity at 61 Jane Street, Manhattan, NY
*PSC-16-10-00005-P	..... exempt	To consider adopting and expanding mobile stray voltage testing requirements	Adopt additional mobile stray voltage testing requirements
*PSC-16-10-00007-P	..... exempt	Interconnection of the networks between TDS Telecom and PAETEC Communications for local exchange service and exchange access	To review the terms and conditions of the negotiated agreement between TDS Telecom and PAETEC Communications
*PSC-16-10-00015-P	..... exempt	Interconnection of the networks between Frontier and Choice One Communications for local exchange service and exchange access	To review the terms and conditions of the negotiated agreement between Frontier and Choice One Communications
*PSC-18-10-00009-P	..... exempt	Electric utility transmission right-of-way management practices	To consider electric utility transmission right-of-way management practices

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-19-10-00022-P	..... exempt	Whether National Grid should be permitted to transfer a parcel of property located at 1 Eddy Street, Fort Edward, New York	To decide whether to approve National Grid's request to transfer a parcel of vacant property in Fort Edward, New York
*PSC-22-10-00006-P	..... exempt	Requirement that Noble demonstrate that its affiliated electric corporations operating in New York are providing safe service	Consider requiring that Noble demonstrate that its affiliated electric corporations in New York are providing safe service
*PSC-22-10-00008-P	..... exempt	Petition for the submetering of electricity	To consider the request of 48-52 Franklin Street to submeter electricity at 50 Franklin Street, New York, New York
*PSC-24-10-00009-P	..... exempt	Verizon New York Inc. tariff regulations relating to voice messaging service	To remove tariff regulations relating to retail voice messaging service from Verizon New York Inc.'s tariff
*PSC-25-10-00012-P	..... exempt	Reassignment of the 2-1-1 abbreviated dialing code	Consideration of petition to reassign the 2-1-1 abbreviated dialing code
*PSC-27-10-00016-P	..... exempt	Petition for the submetering of electricity	To consider the request of 9271 Group, LLC to submeter electricity at 960 Busti Avenue, Buffalo, New York
*PSC-34-10-00003-P	..... exempt	The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program	The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program
*PSC-34-10-00005-P	..... exempt	Approval of a contract for \$250,000 in tank repairs that may be a financing	To decide whether to approve a contract between the parties that may be a financing of \$250,000 for tank repairs
*PSC-34-10-00006-P	..... exempt	The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program	The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program
*PSC-36-10-00010-P	..... exempt	Central Hudson's procedures, terms and conditions for an economic development plan	Consideration of Central Hudson's procedures, terms and conditions for an economic development plan
*PSC-40-10-00014-P	..... exempt	Disposition of a state sales tax refund	To determine how much of a state sales tax refund should be retained by National Grid
*PSC-40-10-00021-P	..... exempt	Whether to permit the submetering of natural gas service to a commercial customer at Quaker Crossing Mall	To permit the submetering of natural gas service to a commercial customer at Quaker Crossing Mall
*PSC-41-10-00018-P	..... exempt	Amount of hourly interval data provided to Hourly Pricing customers who have not installed a phone line to read meter	Allow Central Hudson to provide less than a years worth of interval data and charge for manual meter reading for some customers
*PSC-41-10-00022-P	..... exempt	Request for waiver of the individual living unit metering requirements at 5742 Route 5, Vernon, NY	Request for waiver of the individual living unit metering requirements at 5742 Route 5, Vernon, NY
*PSC-42-10-00011-P	..... exempt	Petition for the submetering of electricity	To consider the request of 4858 Group, LLC to submeter electricity at 456 Main Street, Buffalo, New York
*PSC-43-10-00016-P	..... exempt	Utility Access to Ducts, Conduit Facilities and Utility Poles	To review the complaint from Optical Communications Group

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-44-10-00003-P	..... exempt	Third and fourth stage gas rate increase by Corning Natural Gas Corporation	To consider Corning Natural Gas Corporation's request for a third and fourth stage gas rate increase
*PSC-51-10-00018-P	..... exempt	Commission proceeding concerning three-phase electric service by all major electric utilities	Investigate the consistency of the tariff provisions for three-phase electric service for all major electric utilities
*PSC-11-11-00003-P	..... exempt	The proposed transfer of 55.42 acres of land and \$1.4 million of revenues derived from the rendition of public service	The proposed transfer of 55.42 acres of land and \$1.4 million of revenues derived from the rendition of public service
*PSC-13-11-00005-P	..... exempt	Exclude the minimum monthly bill component from the earnings test calculation	Exclude the minimum monthly bill component from the earnings test calculation
*PSC-14-11-00009-P	..... exempt	Petition for the submetering of electricity	To consider the request of 83-30 118th Street to submeter electricity at 83-30 118th Street, Kew Gardens, New York
*PSC-19-11-00007-P	..... exempt	Utility price reporting requirements related to the Commission's "Power to Choose" website	Modify the Commission's utility electric commodity price reporting requirements related to the "Power to Choose" website
*PSC-20-11-00012-P	..... exempt	Petition for the submetering of electricity	To consider the request of KMW Group LLC to submeter electricity at 122 West Street, Brooklyn, New York
*PSC-20-11-00013-P	..... exempt	Determining the reasonableness of Niagara Mohawk Power Corporation d/b/a National Grid 's make ready charges	To determine if the make ready charges of Niagara Mohawk Power Corporation d/b/a National Grid are reasonable
*PSC-22-11-00004-P	..... exempt	Whether to permit the use of the Sensus accWAVE for use in residential gas meter applications	To permit gas utilities in New York State to use the Sensus accWAVE diaphragm gas meter
*PSC-26-11-00007-P	..... exempt	Water rates and charges	To approve an increase in annual revenues by about \$25,266 or 50%
*PSC-26-11-00009-P	..... exempt	Petition for the submetering of electricity at commercial property	To consider the request of by Hoosick River Hardwoods, LLC to submeter electricity at 28 Taylor Avenue, in Berlin, New York
*PSC-26-11-00012-P	..... exempt	Waiver of generation retirement notice requirements	Consideration of waiver of generation retirement notice requirements
*PSC-29-11-00011-P	..... exempt	Petition requesting the Commission reconsider its May 19, 2011 Order and conduct a hearing, and petition to stay said Order.	To consider whether to grant or deny, in whole or in part, Windstream New York's Petition For Reconsideration and Rehearing.
*PSC-35-11-00011-P	..... exempt	Whether to permit Consolidated Edison a waiver to commission regulations Part 226.8	Permit Consolidated Edison to conduct a inspection program in lieu of testing the accuracy of Category C meters
*PSC-36-11-00006-P	..... exempt	To consider expanding mobile stray voltage testing requirements	Adopt additional mobile stray voltage testing requirements
*PSC-38-11-00002-P	..... exempt	Operation and maintenance procedures pertaining to steam trap caps	Adopt modified steam operation and maintenance procedures
*PSC-38-11-00003-P	..... exempt	Waiver of certain provisions of the electric service tariffs of Con Edison	Consideration of waiver of certain provisions of the electric service tariffs of Con Edison

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-40-11-00010-P	..... exempt	Participation of regulated local exchange carriers in the New York Data Exchange, Inc. (NYDE)	Whether to partially modify its order requiring regulated local exchange carriers' participation NYDE
*PSC-40-11-00012-P	..... exempt	Granting of transfer of plant in-service to a regulatory asset	To approve transfer and recovery of unamortized plant investment
*PSC-42-11-00018-P	..... exempt	Availability of telecommunications services in New York State at just and reasonable rates	Providing funding support to help ensure availability of affordable telecommunications service throughout New York
*PSC-43-11-00012-P	..... exempt	Transfer of outstanding shares of stock	Transfer the issued outstanding shares of stock of The Meadows at Hyde Park Water-Works Corporation to HPWS, LLC
*PSC-47-11-00007-P	..... exempt	Remedying miscalculations of delivered gas as between two customer classes	Consideration of Con Edison's proposal to address inter-class delivery imbalances resulting from past Company miscalculations
*PSC-48-11-00007-P	..... exempt	Transfer of controlling interests in generation facilities from Dynegy to PSEG	Consideration of the transfer of controlling interests in electric generation facilities from Dynegy to PSEG
*PSC-48-11-00008-P	..... exempt	Petition for the submetering of electricity	To consider the request of To Better Days, LLC to submeter electricity at 37 East 4th Street, New York, New York
*PSC-01-12-00007-P	..... exempt	The New York State Reliability Council's revisions to its rules and measurements	To adopt revisions to various rules and measurements of the New York State Reliability Council
*PSC-01-12-00008-P	..... exempt	Transfer of real property and easements from NMPNS to NMP3	Consideration of the transfer of real property and easements from NMPNS to NMP3
*PSC-01-12-00009-P	..... exempt	Recovery of expenses related to the expansion of Con Edison's ESCO referral program, PowerMove	To determine how and to what extent expenses related to the Expansion of Con Edison's ESCO referral program should be recovered
*PSC-11-12-00002-P	..... exempt	Whether to grant, deny or modify, in whole or part, Hegeman's petition for a waiver of Commission policy and Con Edison tariff	Whether to grant, deny or modify, in whole or part, Hegeman's petition for a waiver of Commission policy and Con Edison tariff
*PSC-11-12-00005-P	..... exempt	Transfer of land and water supply assets	Transfer the land and associated water supply assets of Groman Shores, LLC to Robert Groman
*PSC-13-12-00005-P	..... exempt	Authorization to transfer certain real property	To decide whether to approve the transfer of certain real property
*PSC-19-12-00023-P	..... exempt	Petition for approval pursuant to Section 70 for the sale of goods with an original cost of less than \$100,000	To consider whether to grant, deny or modify, in whole or in part, the petition filed by Orange and Rockland Utilities, Inc.
*PSC-21-12-00006-P	..... exempt	Tariff filing requirements and refunds	To determine if certain agreements should be filed pursuant to the Public Service Law and if refunds are warranted
*PSC-21-12-00011-P	..... exempt	Whether to grant, deny or modify, in whole or part, the petition for waiver of tariff Rules 8.6 and 47	Whether to grant, deny or modify, in whole or part, the petition for waiver of tariff Rules 8.6 and 47

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-23-12-00007-P	..... exempt	The approval of a financing upon a transfer to Alliance of upstream ownership interests in a generation facility	To consider the approval of a financing upon a transfer to Alliance of upstream ownership interests in a generation facility
*PSC-23-12-00009-P	..... exempt	Over earnings sharing between rate payers and shareholders	To establish an Earnings Sharing Mechanism to be applied following the conclusion of Corning's rate plan
*PSC-27-12-00012-P	..... exempt	Implementation of recommendations made in a Management Audit Report	To consider implementation of recommendations made in a Management Audit Report
*PSC-28-12-00013-P	..... exempt	Exemption of reliability reporting statistics for the purpose of the 2012 Reliability Performance Mechanism	Consideration of Orange and Rockland Utilities request for exemption of the 2012 reliability reporting statistics
*PSC-29-12-00019-P	..... exempt	Waiver of 16 NYCRR 894.1 through 894.4	To allow the Town of Hamden to waive certain preliminary franchising procedures to expedite the franchising process.
*PSC-30-12-00010-P	..... exempt	Waiver of 16 NYCRR 894.1 through 894.4	To allow the Town of Andes to waive certain preliminary franchising procedures to expedite the franchising process
*PSC-33-12-00009-P	..... exempt	Telecommunications companies ability to attach to utility company poles	Consideration of Tech Valley's ability to attach to Central Hudson poles
*PSC-37-12-00009-P	..... exempt	Proposed modification by Con Edison of its procedures to calculate estimated bills to its customers	Proposed modification by Con Edison of its procedures to calculate estimated bills to its customers
*PSC-42-12-00009-P	..... exempt	Regulation of Gipsy Trail Club, Inc.'s long-term financing agreements	To exempt Gipsy Trail Club, Inc. from Commission regulation of its financing agreements
*PSC-45-12-00008-P	..... exempt	Whether to grant, deny or modify, in whole or part, ESHG's petition for a waiver of Commission policy and RG&E tariff	Whether to grant, deny or modify, in whole or part, ESHG's petition for a waiver of Commission policy and RG&E tariff
*PSC-45-12-00010-P	..... exempt	Whether to grant, deny or modify, in whole or in part the petition of Con Edison to grant easements to Millwood Fire District	Whether to grant, deny or modify, in whole or in part the petition of Con Edison to grant easements to Millwood Fire District
*PSC-50-12-00003-P	..... exempt	Affiliate standards for Corning Natural Gas Corporation	To resolve issues raised by Corning Natural Gas Corporation in its petition for rehearing
*PSC-04-13-00006-P	..... exempt	Expansion of mandatory day ahead hourly pricing for customers of Orange and Rockland Utilities with demands above 100 kW	To consider the expansion of mandatory day ahead hourly pricing for customers with demands above 100 kW
*PSC-04-13-00007-P	..... exempt	Authorization to transfer certain real property.	To decide whether to approve the transfer of certain real property.
*PSC-06-13-00008-P	..... exempt	Verizon New York Inc.'s retail service quality	To investigate Verizon New York Inc.'s retail service quality
*PSC-08-13-00012-P	..... exempt	Filing requirements for certain Article VII electric facilities	To ensure that applications for certain electric transmission facilities contain pertinent information

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-08-13-00014-P	..... exempt	Uniform System of Accounts - Request for Accounting Authorization	To allow the company to defer an item of expense or capital beyond the end of the year in which it was incurred
*PSC-12-13-00007-P	..... exempt	Protecting company water mains	To allow the company to require certain customers to make changes to the electrical grounding system at their homes
*PSC-13-13-00008-P	..... exempt	The potential waiver of 16 NYCRR 255.9221(d) completion of integrity assessments for certain gas transmission lines.	To determine whether a waiver of the timely completion of certain gas transmission line integrity assessments should be granted.
*PSC-18-13-00007-P	..... exempt	Whether Demand Energy Networks energy storage systems should be designated technologies for standby rate eligibility purposes	Whether Demand Energy Networks energy storage systems should be designated technologies for standby rate eligibility purposes
*PSC-21-13-00003-P	..... exempt	To consider policies that may impact consumer acceptance and use of electric vehicles	To consider and further develop policies that may impact consumer acceptance and use of electric vehicles
*PSC-21-13-00005-P	..... exempt	To implement an abandonment of Windover's water system	To approve the implementation of abandonment of Windover's water system
*PSC-21-13-00008-P	..... exempt	Rates of National Fuel Gas Distribution Corporation	To make the rates of National Fuel Gas Distribution Corporation temporary, subject to refund, if they are found to be excessive
*PSC-21-13-00009-P	..... exempt	Reporting requirements for natural gas local distribution companies	To help ensure efficient and economic expansion of the natural gas system as appropriate
*PSC-22-13-00009-P	..... exempt	On remand from New York State court litigation, determine the recovery of certain deferred amounts owed NFG by ratepayers	On remand, to determine the recovery of certain deferral amounts owed NFG from ratepayers
*PSC-23-13-00005-P	..... exempt	Waiver of partial payment, directory database distribution, service quality reporting, and service termination regulations	Equalize regulatory treatment based on level of competition and practical considerations
*PSC-25-13-00008-P	..... exempt	To deny, grant or modify, in whole or in part, Central Hudson's rehearing request.	To deny, grant or modify, in whole or in part, Central Hudson's rehearing request.
*PSC-25-13-00009-P	..... exempt	Provision by utilities of natural gas main and service lines.	To help ensure efficient and economic expansion of the natural gas system as appropriate.
*PSC-25-13-00012-P	..... exempt	To deny, grant or modify, in whole or in part, Central Hudson's rehearing request.	To deny, grant or modify, in whole or in part, Central Hudson's rehearing request.
*PSC-27-13-00014-P	..... exempt	Columbia Gas Transmission Corporation Cost Refund	For approval for temporary waiver of tariff provisions regarding its Columbia Gas Transmission Corporation cost refund.
*PSC-28-13-00014-P	..... exempt	Provision for the recovery and allocation of costs of transmission projects that reduce congestion on certain interfaces	To consider the recovery and allocation of costs of transmission projects that reduce congestion on certain interfaces
*PSC-28-13-00016-P	..... exempt	The request of NGT for lightened regulation as a gas corporation.	To consider whether to approve, reject, or modify the request of Niagara gas transport of Lockport, NY LLC.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-28-13-00017-P	..... exempt	The request by TE for waiver of regulations requiring that natural gas be odorized in certain gathering line segments	Consider the request by TE for waiver of regulations that gas be odorized in certain lines
*PSC-32-13-00009-P	..... exempt	To consider the definition of “misleading or deceptive conduct” in the Commission’s Uniform Business Practices	To consider the definition of “misleading or deceptive conduct” in the Commission’s Uniform Business Practices
*PSC-32-13-00012-P	..... exempt	To consider whether NYSEG should be required to undertake actions to protect its name and to minimize customer confusion	To consider whether NYSEG should be required to undertake actions to protect its name and to minimize customer confusion
*PSC-33-13-00027-P	..... exempt	Waive underground facility requirements for new construction in residential subdivisions to allow for overhead electric lines.	Determine whether Chapin Lumberland, LLC subdivision will be allowed overhead electric distribution and service lines.
*PSC-33-13-00029-P	..... exempt	Deferral of incremental costs associated with the restoration of steam service following Superstorm Sandy.	To consider a petition by Con Edison to defer certain incremental steam system restoration costs relating to Superstorm Sandy.
*PSC-34-13-00004-P	..... exempt	Escrow account and surcharge to fund extraordinary repairs	To approve the establishment of an escrow account and surcharge
*PSC-42-13-00013-P	..... exempt	Failure to Provide Escrow Information	The closure of the Escrow Account
*PSC-42-13-00015-P	..... exempt	Failure to Provide Escrow Information	The closure of the Escrow Account
*PSC-43-13-00015-P	..... exempt	Petition for submetering of electricity	To consider the request of 2701 Kingsbridge Terrace L.P. to submeter electricity at 2701 Kingsbridge Terrace, Bronx, N.Y.
*PSC-45-13-00021-P	..... exempt	Investigation into effect of bifurcation of gas and electric utility service on Long Island.	To consider a Petition for an investigation into effect of bifurcation of gas and electric utility service on Long Island.
*PSC-45-13-00022-P	..... exempt	Waiver of PSC regulations, 16 NYCRR section 88.4(a)(4)	To consider a waiver of certain regulations relating to the content of an application for transmission line siting
*PSC-45-13-00023-P	..... exempt	Waiver of PSC regulations, 16 NYCRR section 88.4(a)(4).	To consider a waiver of certain regulations relating to the content of an application for transmission line siting
*PSC-45-13-00024-P	..... exempt	Waiver of PSC regulations, 16 NYCRR section 88.4(a)(4); waiver of filing deadlines.	To consider a waiver of certain regulations relating to the content of an application for transmission line siting
*PSC-45-13-00025-P	..... exempt	Waiver of PSC regulations, 16 NYCRR section 88.4(a)(4).	To consider a waiver of certain regulations relating to the content of an application for transmission line siting
*PSC-47-13-00009-P	..... exempt	Petition for submetering of electricity.	To consider the request of Hegeman Avenue Housing L.P. to submeter electricity at 39 Hegeman Avenue, Brooklyn, N.Y.
*PSC-47-13-00012-P	..... exempt	Conditioning,restricting or prohibiting the purchase of services by NYSEG and RG&E from certain affiliates.	Consideration of conditioning,restricting or prohibiting the purchase of services by NYSEG and RG&E from certain affiliates.
*PSC-49-13-00008-P	..... exempt	Authorization to transfer all of Crystal Water Supply Company, Inc. stocks to Essel Infra West Inc.	To allow Crystal Water Supply Company, Inc to transfer all of its issued and outstanding stocks to Essel Infra West Inc.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-51-13-00009-P	..... exempt	Consolidated Edison proposing to use data from a test period ending September 30, 2013 to support its next rate filing.	To ensure there is a reasonable basis for data submitted in support of a request for a change in rates.
*PSC-51-13-00010-P	..... exempt	Consolidated Edison proposing to use data from a test period ending September 30, 2013 to support its next rate filing.	To ensure there is a reasonable basis for data submitted in support of a request for a change in rates.
*PSC-51-13-00011-P	..... exempt	Consolidated Edison proposing to use data from a test period ending September 30, 2013 to support its next rate filing.	To ensure there is a reasonable basis for data submitted in support of a request for a change in rates.
*PSC-52-13-00012-P	..... exempt	The development of reliability contingency plan(s) to address the potential retirement of Indian Point Energy Center (IPEC).	To address the petition for rehearing and reconsideration/motion for clarification of the IPEC reliability contingency plan(s).
*PSC-52-13-00015-P	..... exempt	To enter into a loan agreement with the banks for up to an amount of \$94,000.	To consider allowing Knolls Water Company to enter into a long-term loan agreement.
*PSC-05-14-00010-P	..... exempt	The New York State Reliability Council's revisions to its rules and measurements	To adopt revisions to various rules and measurements of the New York State Reliability Council
*PSC-07-14-00008-P	..... exempt	Petition for submetering of electricity	To consider the request of Greater Centennial Homes HDFC, Inc. to submeter electricity at 102, 103 and 106 W 5th Street, et al.
*PSC-07-14-00012-P	..... exempt	Water rates and charges	Implementation of Long-Term Water Supply Surcharge to recover costs associated with the Haverstraw Water Supply Project
*PSC-08-14-00015-P	..... exempt	Verizon New York Inc.'s service quality and Customer Trouble Report Rate (CTRR) levels at certain central office entities	To improve Verizon New York Inc.'s service quality and the Customer Trouble Report Rate levels at certain central office entities
*PSC-10-14-00006-P	..... exempt	Actions to facilitate the availability of ESCO value-added offerings, ESCO eligibility and ESCO compliance	To facilitate ESCO value-added offerings and to make changes to ESCO eligibility and to ensure ESCO compliance
*PSC-11-14-00003-P	..... exempt	Provision for the recovery and allocation of costs of transmission projects that reduce congestion on certain interfaces	To consider the recovery and allocation of costs of transmission projects that reduce congestion on certain interfaces
*PSC-16-14-00014-P	..... exempt	Whether to order NYSEG to provide gas service to customers when an expanded CPCN is approved and impose PSL 25-a penalties.	To order gas service to customers in the Town of Plattsburgh after approval of a town wide CPCN and to impose penalties.
*PSC-16-14-00015-P	..... exempt	Whether Central Hudson should be permitted to defer obligations of the Order issued on October 18, 2013 in Case 13-G-0336.	Consideration of the petition by Central Hudson to defer reporting obligations of the October 18, 2013 Order in Case 13-G-0336
*PSC-17-14-00003-P	..... exempt	Con Edison's Report on its 2013 performance under the Electric Service Reliability Performance Mechanism	Con Edison's Report on its 2013 performance under the Electric Service Reliability Performance Mechanism
*PSC-17-14-00004-P	..... exempt	To consider certain portions of petitions for rehearing, reconsideration and/or clarification	To consider certain portions of petitions for rehearing, reconsideration and/or clarification
*PSC-17-14-00007-P	..... exempt	To consider petitions for rehearing, reconsideration and/or clarification	To consider petitions for rehearing, reconsideration and/or clarification

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-17-14-00008-P	..... exempt	To consider certain portions of petitions for rehearing, reconsideration and/or clarification	To consider certain portions of petitions for rehearing, reconsideration and/or clarification
*PSC-19-14-00014-P	..... exempt	Market Supply Charge	To make tariff revisions to the Market Supply Charge for capacity related costs
*PSC-19-14-00015-P	..... exempt	Whether to permit the use of the Sensus accuWAVE for use in residential and commercial gas meter applications	To permit gas utilities in New York State to use the Sensus accuWAVE 415TC gas meter
*PSC-22-14-00013-P	..... exempt	Petition to transfer and merge systems, franchises and assets.	To consider the Comcast and Time Warner Cable merger and transfer of systems, franchises and assets.
*PSC-23-14-00010-P	..... exempt	Whether to permit the use of the GE Dresser Series B3-HPC 11M-1480 rotary gas met for use in industrial gas meter applications	To permit gas utilities in New York State to use the GE Dresser Series B3-HPC 11M-1480 rotary gas meter
*PSC-23-14-00014-P	..... exempt	Waiver of the negative revenue adjustment associated with KEDLI's 2013 Customer Satisfaction Performance Metric	Consideration of KEDLI's waiver request pertaining to its 2013 performance under its Customer Satisfaction Metric
*PSC-24-14-00005-P	..... exempt	To examine LDC's performance and performance measures.	To improve gas safety performance.
*PSC-26-14-00013-P	..... exempt	Waiver of RG&E's tariffed definition of emergency generator.	To consider waiver of RG&E's tariffed definition of emergency generator.
*PSC-26-14-00020-P	..... exempt	New electric utility backup service tariffs and standards for interconnection may be adopted.	To encourage development of microgrids that enhance the efficiency, safety, reliability and resiliency of the electric grid.
*PSC-26-14-00021-P	..... exempt	Consumer protections, standards and protocols pertaining to access to customer data may be established.	To balance the need for the information necessary to support a robust market with customer privacy concerns.
*PSC-28-14-00014-P	..... exempt	Petition to transfer systems, franchises and assets.	To consider the Comcast and Charter transfer of systems, franchise and assets.
*PSC-30-14-00023-P	..... exempt	Whether to permit the use of the Sensus iPERL Fire Flow Meter.	Pursuant to 16 NYCRR Part 500.3 , it is necessary to permit the use of the Sensus iPERL Fire Flow Meter.
*PSC-30-14-00026-P	..... exempt	Petition for a waiver to master meter electricity.	Considering the request of Renaissance Corporation of to master meter electricity at 100 Union Drive,Albany, NY.
*PSC-31-14-00004-P	..... exempt	To transfer 100% of the issued and outstanding stock from Vincent Cross to Bonnie and Michael Cross	To transfer 100% of the issued and outstanding stock from Vincent Cross to Bonnie and Michael Cross
*PSC-32-14-00012-P	..... exempt	Whether to grant or deny, in whole or in part, the Connect New York Coalition's petition	To consider the Connect New York Coalition's petition seeking a formal investigation and hearings
*PSC-35-14-00004-P	..... exempt	Regulation of a proposed electricity generation facility located in the Town of Brookhaven, NY	To consider regulation of a proposed electricity generation facility located in the Town of Brookhaven, NY
*PSC-35-14-00005-P	..... exempt	Whether to permit the use of the Sensus iConA electric meter	Pursuant to 16 NYCRR Parts 92 and 93, Commission approval is necessary to permit the use of the Sensus iConA electric meter

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-36-14-00009-P	..... exempt	Modification to the Commission's Electric Safety Standards.	To consider revisions to the Commission's Electric Safety Standards.
*PSC-38-14-00003-P	..... exempt	Whether to approve, reject or modify, in whole or in part a time-sensitive rate pilot program.	Whether to approve, reject or modify, in whole or in part a time-sensitive rate pilot program.
*PSC-38-14-00004-P	..... exempt	The study and petition of Con Edison regarding use, accounting and ratemaking treatment for 11-23 and 2-28 Hudson Ave. Brooklyn.	The study and petition of Con Edison regarding use, accounting and ratemaking treatment for 11-23 and 2-28 Hudson Ave. Brooklyn.
*PSC-38-14-00005-P	..... exempt	Action on the report and petition of Con Edison regarding the Storm Hardening and Resiliency Collaborative, Phase 2.	Action on the report and petition of Con Edison regarding the Storm Hardening and Resiliency Collaborative, Phase 2.
*PSC-38-14-00007-P	..... exempt	Whether to expand Con Edison's low income program to include Medicaid recipients.	Whether to expand Con Edison's low income program to include Medicaid recipients.
*PSC-38-14-00008-P	..... exempt	The study and petition of Con Edison regarding use, accounting and ratemaking treatment for 11-23 and 2-28 Hudson Ave. Brooklyn.	The study and petition of Con Edison regarding use, accounting and ratemaking treatment for 11-23 and 2-28 Hudson Ave. Brooklyn.
*PSC-38-14-00010-P	..... exempt	Inter-carrier telephone service quality standard and metrics and administrative changes.	To review recommendations from the Carrier Working Group and incorporate appropriate modifications to the existing Guidelines.
*PSC-38-14-00012-P	..... exempt	Action on the report and petition of Con Edison regarding the Storm Hardening and Resiliency Collaborative, Phase 2.	Action on the report and petition of Con Edison regarding the Storm Hardening and Resiliency Collaborative, Phase 2.
*PSC-39-14-00020-P	..... exempt	Whether to permit the use of the Mueller Systems 400 Series and 500 Series of water meters	Pursuant to 16 NYCRR section 500.3, whether to permit the use of the Mueller Systems 400, and 500 Series of water meters
*PSC-40-14-00008-P	..... exempt	To consider granting authorization for Buy Energy Direct to resume marketing to residential customers.	To consider granting authorization for Buy Energy Direct to resume marketing to residential customers.
*PSC-40-14-00009-P	..... exempt	Whether to permit the use of the Itron Open Way Centron Meter with Hardware 3.1 for AMR and AMI functionality.	Pursuant to 16 NYCRR Parts 93, is necessary to permit the use of the Itron Open Way Centron Meter with Hardware 3.1.
*PSC-40-14-00011-P	..... exempt	Late Payment Charge.	To modify Section 7.6 - Late Payment Charge to designate a specific time for when a late payment charge is due.
*PSC-40-14-00013-P	..... exempt	Regulation of a proposed natural gas pipeline and related facilities located in the Town of Ticonderoga, NY.	To consider regulation of a proposed natural gas pipeline and related facilities located in the Town of Ticonderoga, NY.
*PSC-40-14-00014-P	..... exempt	Waiver of 16 NYCRR Sections 894.1 through 894.4(b)(2)	To allow the Town of Goshen, NY, to waive certain preliminary franchising procedures to expedite the franchising process.
*PSC-40-14-00015-P	..... exempt	Late Payment Charge.	To modify Section 6.6 - Late Payment Charge to designate a specific time for when a late payment charge is due.
*PSC-42-14-00003-P	..... exempt	Annual Reconciliation of Gas Expenses and Gas Cost Recoveries	The filings of various LDCs and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-42-14-00004-P	..... exempt	Winter Bundled Sales Service Option	To modify SC-11 to remove language relating to fixed storage charges in the determination of the Winter Bundled Sales charge
*PSC-48-14-00014-P	..... exempt	Considering the recommendations contained in Staff's electric outage investigation report for MNRR, New Haven Line.	To consider the recommendations contained in Staff's electric outage investigation report for MNRR, New Haven Line.
*PSC-52-14-00019-P	..... exempt	Petition for a waiver to master meter electricity.	Considering the request of 614 South Crouse Avenue, LLC to master meter electricity at 614 South Crouse Avenue, Syracuse, NY..
*PSC-01-15-00014-P	..... exempt	State Universal Service Fund Disbursements	To consider Edwards Telephone Company's request for State Universal Service Fund disbursements
*PSC-08-15-00009-P	..... exempt	Approval of a surcharge.	To allow or disallow Emerald Green Lake Louise Marie Water Company, Inc. for a surcharge.
*PSC-08-15-00010-P	..... exempt	Request pertaining to the lawfulness of National Grid USA continuing its summary billing program.	To grant, deny, or modify URAC Rate Consultants' request that National Grid cease its summary billing program.
*PSC-10-15-00007-P	..... exempt	Notification concerning tax refunds	To consider Verizon New York Inc.'s partial rehearing or reconsideration request regarding retention of property tax refunds
*PSC-10-15-00008-P	..... exempt	Whether to waive Policy on Test Periods in Major Rate Proceedings and provide authority to file tariff changes	Whether to waive Policy on Test Periods in Major Rate Proceedings and provide authority to file tariff changes
*PSC-13-15-00024-P	..... exempt	Whether Leatherstocking should be permitted to recover a shortfall in earnings	To decide whether to approve Leatherstocking's request to recover a shortfall in earnings
*PSC-13-15-00026-P	..... exempt	Whether to permit the use of the Sensus Smart Point Gas AMR/AMI product	To permit the use of the Sensus Smart Point Gas AMR/AMI product
*PSC-13-15-00027-P	..... exempt	Whether to permit the use of the Measurlogic DTS 310 electric submeter	To permit the use of the Measurlogic DTS 310 submeter
*PSC-13-15-00028-P	..... exempt	Whether to permit the use of the SATEC EM920 electric meter	To permit necessary to permit the use of the SATEC EM920 electric meter
*PSC-13-15-00029-P	..... exempt	Whether to permit the use the Triacta Power Technologies 6103, 6112, 6303, and 6312 electric submeters	To permit the use of the Triacta submeters
*PSC-17-15-00007-P	..... exempt	To consider the petition of Leatherstocking Gas Company, LLC seeking authority to issue long-term debt of \$2.75 million	To consider the petition of Leatherstocking Gas Company, LLC seeking authority to issue long-term debt of \$2.75 million
*PSC-18-15-00005-P	..... exempt	Con Edison's Report on its 2014 performance under the Electric Service Reliability Performance Mechanism	Con Edison's Report on its 2014 performance under the Electric Service Reliability Performance Mechanism
*PSC-19-15-00011-P	..... exempt	Gas Safety Performance Measures and associated negative revenue adjustments	To update the performance measures applicable to KeySpan Gas East Corporation d/b/a National Grid

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-22-15-00015-P	..... exempt	To consider the request for waiver of the individual residential unit meter requirements and 16 NYCRR 96.1(a)	To consider the request for waiver of the individual residential unit meter requirements and 16 NYCRR 96.1(a)
*PSC-23-15-00005-P	..... exempt	The modification of New York American Water's current rate plan	Whether to adopt the terms of the Joint Proposal submitted by NYAW and DPS Staff
*PSC-23-15-00006-P	..... exempt	The modification of New York American Water's current rate plan	Whether to adopt the terms of the Joint Proposal submitted by NYAW and DPS Staff
*PSC-25-15-00008-P	..... exempt	Notice of Intent to Submeter electricity.	To consider the request of 165 E 66 Residences, LLC to submeter electricity at 165 East 66th Street, New York, New York.
*PSC-29-15-00025-P	..... exempt	Joint Petition for authority to transfer real property located at 624 West 132nd Street, New York, NY	Whether to authorize the proposed transfer of real property located at 624 West 132nd Street, New York, NY
*PSC-32-15-00006-P	..... exempt	Development of a Community Solar Demonstration Project.	To approve the development of a Community Solar Demonstration Project.
*PSC-33-15-00009-P	..... exempt	Remote net metering of a demonstration community net metering program.	To consider approval of remote net metering of a demonstration community net metering program.
*PSC-33-15-00012-P	..... exempt	Remote net metering of a Community Solar Demonstration Project.	To consider approval of remote net metering of a Community Solar Demonstration Project.
*PSC-34-15-00021-P	..... exempt	Petition by NYCOM requesting assistance with obtaining information on CLECs and ESCOs	To consider the petition by NYCOM requesting assistance with obtaining information on CLECs and ESCOs
*PSC-35-15-00014-P	..... exempt	Consideration of consequences against Light Power & Gas, LLC for violations of the UBP	To consider consequences against Light Power & Gas, LLC for violations of the UBP
*PSC-37-15-00007-P	..... exempt	Submetered electricity	To consider the request of 89 Murray Street Ass. LLC, for clarification of the submetering order issued December 20, 2007
*PSC-40-15-00014-P	..... exempt	Whether to permit the use of the Open Way 3.5 with cellular communications	To consider the use of the Open Way 3.5 electric meter, pursuant to 16 NYCRR Parts 92 and 93
*PSC-42-15-00006-P	..... exempt	Deferral of incremental expenses associated with NERC's new Bulk Electric System (BES) compliance requirements approved by FERC.	Consideration of Central Hudson's request to defer incremental expenses associated with new BES compliance requirements.
*PSC-44-15-00028-P	..... exempt	Deferral of incremental expenses associated with new compliance requirements	Consideration of Central Hudson's request to defer incremental expenses associated with new compliance requirements
*PSC-47-15-00013-P	..... exempt	Whitepaper on Implementing Lightened Ratemaking Regulation.	Consider Whitepaper on Implementing Lightened Ratemaking Regulation.
*PSC-48-15-00011-P	..... exempt	Proposal to retire Huntley Units 67 and 68 on March 1, 2016.	Consider the proposed retirement of Huntley Units 67 and 68.
*PSC-50-15-00006-P	..... exempt	The reduction of rates.	To consider the reduction of rates charged by Independent Water Works, Inc.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-50-15-00009-P	..... exempt	Notice of Intent to submeter electricity.	To consider the request to submeter electricity at 31-33 Lincoln Road and 510 Flatbush Avenue, Brooklyn, New York.
*PSC-51-15-00010-P	..... exempt	Modification of the EDP	To consider modifying the EDP
*PSC-01-16-00005-P	..... exempt	Proposed amendment to Section 5, Attachment 1.A of the Uniform Business Practices	To consider amendment to Section 5, Attachment 1.A of the Uniform Business Practices
*PSC-04-16-00007-P	..... exempt	Whether Hamilton Municipal Utilities should be permitted to construct and operate a municipal gas distribution facility.	Consideration of the petition by Hamilton Municipal Utilities to construct and operate a municipal gas distribution facility.
*PSC-04-16-00012-P	..... exempt	Proposal to mothball three gas turbines located at the Astoria Gas Turbine Generating Station.	Consider the proposed mothball of three gas turbines located at the Astoria Gas Turbine Generating Station.
*PSC-04-16-00013-P	..... exempt	Proposal to find that three gas turbines located at the Astoria Gas Turbine Generating Station are uneconomic.	Consider whether three gas turbines located at the Astoria Gas Turbine Generating Station are uneconomic.
*PSC-06-16-00013-P	..... exempt	Continued deferral of approximately \$16,000,000 in site investigation and remediation costs.	To consider the continued deferral of approximately \$16,000,000 in site investigation and remediation costs.
*PSC-06-16-00014-P	..... exempt	MEGA's proposed demonstration CCA program.	To consider MEGA's proposed demonstration CCA program.
*PSC-14-16-00008-P	..... exempt	Resetting retail markets for ESCO mass market customers.	To ensure consumer protections with respect to residential and small non-residential ESCO customers.
*PSC-18-16-00013-P	..... exempt	Amendments to the Uniform Business Practices of ESCOs.	To ensure consumer protection for ESCO customers.
*PSC-18-16-00014-P	..... exempt	Amendments to the Uniform Business Practices of ESCOs.	To ensure consumer protection for ESCO customers.
*PSC-18-16-00015-P	..... exempt	Petitions for rehearing of the Order Resetting Retail Energy Markets and Establishing Further Process.	To ensure consumer protections for ESCO customers.
*PSC-18-16-00016-P	..... exempt	Amendments to the Uniform Business Practices of ESCOs.	To ensure consumer protection for ESCO customers.
*PSC-18-16-00018-P	..... exempt	Amendments to the Uniform Business Practices of ESCOs.	To ensure consumer protection for ESCO customers.
*PSC-20-16-00008-P	..... exempt	Consideration of consequences against Global Energy Group, LLC for violations of the Uniform Business Practices (UBP).	To consider consequences against Global Energy Group, LLC for violations of the Uniform Business Practices (UBP).
*PSC-20-16-00010-P	..... exempt	Deferral and recovery of incremental expense.	To consider deferring costs of conducting leak survey and repairs for subsequent recovery.
*PSC-20-16-00011-P	..... exempt	Enetics LD-1120 Non-Intrusive Load Monitoring Device in the Statewide Residential Appliance Metering Study.	To consider the use of the Enetics LD-1120 Non-Intrusive Load Monitoring Device.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-24-16-00009-P	..... exempt	Petition to submeter gas service.	To consider the Petition of New York City Economic Development Corp. to submeter gas at Pier 17, 89 South Street, New York, NY.
*PSC-25-16-00009-P	..... exempt	To delay Companies' third-party assessments of customer personally identifiable information until 2018.	To extend the time period between the Companies' third-party assessments of customer personally identifiable information.
*PSC-25-16-00025-P	..... exempt	Acquisition of all water supply assets of Woodbury Heights Estates Water Co., Inc. by the Village of Kiryas Joel.	To consider acquisition of all water supply assets of Woodbury Heights Estates Water Co., Inc. by the Village of Kiryas Joel.
*PSC-25-16-00026-P	..... exempt	Use of the Badger E Series Ultrasonic Cold Water Stainless Steel Meter, in residential fire service applications.	To consider the use of the Badger E Series Ultrasonic Cold Water Stainless Steel Meter in fire service applications.
*PSC-28-16-00017-P	..... exempt	A petition for rehearing of the Order Adopting a Ratemaking and Utility Revenue Model Policy Framework.	To determine appropriate rules for and calculation of the distributed generation reliability credit.
*PSC-29-16-00024-P	..... exempt	Participation of NYPA customers in surcharge-funded clean energy programs.	To consider participation of NYPA customers in surcharge-funded clean energy programs.
*PSC-32-16-00012-P	..... exempt	Benefit-Cost Analysis Handbooks.	To evaluate proposed methodologies of benefit-cost evaluation.
*PSC-33-16-00001-EP	..... exempt	Use of escrow funds for repairs.	To authorize the use of escrow account funds for repairs.
*PSC-33-16-00005-P	..... exempt	Exemption from certain charges for delivery of electricity to its Niagara Falls, New York facility.	Application of System Benefits Charges, Renewable Portfolio Standard charges and Clean Energy Fund surcharges.
*PSC-35-16-00015-P	..... exempt	NYSRC's revisions to its rules and measurements	To consider revisions to various rules and measurements of the NYSRC
*PSC-36-16-00004-P	..... exempt	Recovery of costs for installation of electric service.	To consider the recovery of costs for installation of electric service.
*PSC-40-16-00025-P	..... exempt	Consequences pursuant to the Commission's Uniform Business Practices (UBP).	To consider whether to impose consequences on Smart One for its apparent non-compliance with Commission requirements.
*PSC-47-16-00009-P	..... exempt	Petition to use commercial electric meters	To consider the petition of Itron, Inc. to use the Itron CP2SO and CP2SOA in commercial electric meter applications
*PSC-47-16-00010-P	..... exempt	Standby Service rate design	To consider the report filed and the recommendations therein
*PSC-47-16-00013-P	..... exempt	Standby Service rate design	To consider the report filed and the recommendations therein
*PSC-47-16-00014-P	..... exempt	Standby Service rate design	To consider the report filed and the recommendations therein
*PSC-47-16-00016-P	..... exempt	Standby Service rate design	To consider the report filed and the recommendations therein
*PSC-02-17-00010-P	..... exempt	Implementation of the four EAMs.	To consider the implementation of EAMs for RG&E.

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<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-02-17-00012-P	..... exempt	Implementation of the four EAMs.	To consider the implementation of EAMs for NYSEG.
*PSC-14-17-00017-P	..... exempt	Petition for Full-Scale Deployment of AMI and to Establish an AMI Surcharge.	To consider the petition for Full-Scale Deployment of AMI and to Establish an AMI Surcharge.
*PSC-18-17-00024-P	..... exempt	A petition for rehearing or reconsideration of the Order Addressing Public Policy Transmission Need for AC Transmission Upgrades	To determine whether Public Policy Transmission Need/Public Policy Requirements continue to exist.
*PSC-18-17-00026-P	..... exempt	Revisions to the Dynamic Load Management surcharge.	To consider revisions to the Dynamic Load Management surcharge.
*PSC-19-17-00004-P	..... exempt	NYAW's request to defer and amortize, for future rate recognition, pension settlement payout losses incurred in 2016.	Consideration of NYAW's petition to defer and amortize, for future rate recognition, pension payout losses incurred in 2016.
*PSC-20-17-00008-P	..... exempt	Compressed natural gas as a motor fuel for diesel fueled vehicles.	To consider a report filed by National Grid NY regarding the potential for adoption of compressed natural gas as a motor fuel.
*PSC-20-17-00010-P	..... exempt	Compressed natural gas as a motor fuel for diesel fueled vehicles.	To consider a report filed by National Grid regarding the potential for adoption of compressed natural gas as a motor fuel.
*PSC-21-17-00013-P	..... exempt	The establishment and implementation of Earnings Adjustment Mechanisms.	To consider the establishment and implementation of Earnings Adjustment Mechanisms.
*PSC-21-17-00018-P	..... exempt	Proposed agreement for the provision of water service by Saratoga Water Services, Inc.	To consider a waiver and approval of terms of a service agreement.
*PSC-22-17-00004-P	..... exempt	Financial incentives to create customer savings and develop market-enabling tools, with a focus on outcomes and incentives	To consider the proposed Interconnection Survey Process and Earnings Adjustment Mechanisms
*PSC-23-17-00022-P	..... exempt	Changes in regulation of ESCOs, including restrictions on or prohibitions of marketing or offering certain products or services.	To ensure consumer protection for ESCO customers.
*PSC-24-17-00006-P	..... exempt	Development of the Utility Energy Registry.	Improved data access.
*PSC-26-17-00005-P	..... exempt	Notice of Intent to submeter electricity.	To consider the Notice of Intent to submeter electricity at 125 Waverly Street, Yonkers, New York.
*PSC-34-17-00011-P	..... exempt	Waiver to permit Energy Cooperative of America to serve low-income customers	To consider the petition for a waiver
*PSC-37-17-00005-P	..... exempt	Financial incentives to create customer savings and develop market-enabling tools, with a focus on outcomes and incentives.	To consider the revised Interconnection Survey Process and Earnings Adjustment Mechanisms.
*PSC-37-17-00006-P	..... exempt	Petition to submeter electricity.	To consider the petition of ACC OP (Park Point SU) LLC to submeter electricity at 417 Comstock Avenue, Syracuse, New York.

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<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-39-17-00011-P	..... exempt	Whether to direct New York State Electric & Gas to complete electric facility upgrades at no charge to Hanehan.	To determine financial responsibility between NYSEG and Hanehan for the electric service upgrades to Hanehan.
*PSC-40-17-00006-P	..... exempt	The aggregation of electric service for the Empire State Plaza and the Sheridan Avenue Steam Plant	To consider a waiver of National Grid's tariff provision requiring all electric delivery points to be on the same premises
*PSC-42-17-00010-P	..... exempt	Petition for rehearing of negative revenue adjustment and contents of annual Performance Report.	To consider NFGD's petition for rehearing.
*PSC-48-17-00015-P	..... exempt	Low Income customer options for affordable water bills.	To consider the Low Income Bill Discount and/or Energy Efficiency Rebate Programs.
*PSC-50-17-00017-P	..... exempt	New Wave Energy Corp.'s petition for rehearing.	To consider the petition for rehearing filed by New Wave Energy Corp.
*PSC-50-17-00018-P	..... exempt	Application of the Public Service Law to DER suppliers.	To determine the appropriate regulatory framework for DER suppliers.
*PSC-50-17-00019-P	..... exempt	Transfer of utility property.	To consider the transfer of utility property.
*PSC-50-17-00021-P	..... exempt	Disposition of tax refunds and other related matters.	To consider the disposition of tax refunds and other related matters.
*PSC-50-17-00022-P	..... exempt	Data protection rules for DER suppliers.	To determine the appropriate regulatory framework for DER suppliers.
*PSC-51-17-00011-P	..... exempt	Petition for recovery of certain costs related to the implementation of a Non-Wires Alternative Project.	To consider Con Edison's petition for the recovery of costs for implementing the JFK Project.
*PSC-04-18-00005-P	..... exempt	Notice of intent to submeter electricity.	To consider the notice of intent of Montante/Morgan Gates Circle LLC to submeter electricity.
*PSC-05-18-00004-P	..... exempt	Lexington Power's ZEC compliance obligation.	To promote and maintain renewable and zero-emission electric energy resources.
*PSC-06-18-00012-P	..... exempt	To consider further proposed amendments to the original criteria to grandfathering established in the Transition Plan	To modify grandfathering criteria
*PSC-06-18-00017-P	..... exempt	Merger of NYAW and Whitlock Farms Water Corp.	To consider the merger of NYAW and Whitlock Farms Water Company into a single corporate entity
*PSC-07-18-00015-P	..... exempt	The accuracy and reasonableness of National Grid's billing for certain interconnection upgrades.	To consider AEC's petition requesting resolution of their billing dispute with National Grid.
*PSC-11-18-00004-P	..... exempt	New York State Lifeline Program.	To consider TracFone's petition seeking approval to participate in Lifeline.
*PSC-13-18-00015-P	..... exempt	Eligibility of an ESCO to market to and enroll residential customers.	To consider whether Astral should be allowed to market to and enroll residential customers following a suspension.
*PSC-13-18-00023-P	..... exempt	Reconciliation of property taxes.	To consider NYAW's request to reconcile property taxes.

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<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-14-18-00006-P	..... exempt	Petition for abandonment	To consider the abandonment of Willsboro Bay Water Company's water system
*PSC-17-18-00010-P	..... exempt	Petition for use of gas metering equipment.	To ensure that consumer bills are based on accurate measurements of gas usage.
*PSC-18-18-00009-P	..... exempt	Transfer of control of Keene Valley Video Inc.	To ensure performance in accordance with applicable cable laws, regulations and standards and the public interest
*PSC-23-18-00006-P	..... exempt	Whether to impose consequences on Aspurity for its non-compliance with Commission requirements.	To ensure the provision of safe and adequate energy service at just and reasonable rates.
*PSC-24-18-00013-P	..... exempt	Implementation of program rules for Renewable Energy Standard and ZEC requirements.	To promote and maintain renewable and zero-emission electric energy resources.
*PSC-28-18-00011-P	..... exempt	Storm Hardening Collaborative Report.	To ensure safe and adequate gas service.
*PSC-29-18-00008-P	..... exempt	Participation in Targeted Accessibility Fund	To encourage enhanced services for low-income consumers
*PSC-29-18-00009-P	..... exempt	Overvaluing real property tax expense recovery in water rates	To prevent unjust and unreasonable water rates
*PSC-34-18-00011-P	..... exempt	Compensation of distributed energy resources.	To ensure just and reasonable rates, including compensation, for distributed energy resources.
*PSC-34-18-00015-P	..... exempt	Petition to submeter electricity.	To ensure adequate submetering equipment and energy efficiency protections are in place.
*PSC-34-18-00016-P	..... exempt	Deferral of pre-staging and mobilization storm costs.	To ensure just and reasonable rates for ratepayers and utility recovery of unexpected, prudently incurred costs.
*PSC-35-18-00003-P	..... exempt	Con Edison's 2018 DSIP and BCA Handbook Update.	To continue Con Edison's transition to a modern utility serving as a Distributed System Platform Provider.
*PSC-35-18-00005-P	..... exempt	NYSEG and RG&E's 2018 DSIP and BCA Handbook Update.	To continue NYSEG and RG&E's transition to modern utilities acting as Distributed System Platform Providers.
*PSC-35-18-00006-P	..... exempt	National Grid's 2018 DSIP and BCA Handbook Update.	To continue National Grid's transition to a modern utility serving as a Distributed System Platform Provider.
*PSC-35-18-00008-P	..... exempt	Central Hudson's 2018 DSIP and BCA Handbook Update.	To continue Central Hudson's transition to a modern utility serving as a Distributed System Platform Provider.
*PSC-35-18-00010-P	..... exempt	O&R's 2018 DSIP and BCA Handbook Update.	To continue O&R's transition to a modern utility acting as a Distributed System Platform Provider.
*PSC-39-18-00005-P	..... exempt	Participation in New York State Lifeline Program.	To encourage enhanced services for low-income customers.
*PSC-40-18-00014-P	..... exempt	Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.	To review the gas utilities' reconciliation of Gas Expenses and Gas Cost Recoveries for 2018.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
*PSC-40-18-00015-P	..... exempt	Proposed rate filing to increase annual revenues.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
*PSC-42-18-00011-P	..... exempt	Voluntary residential beneficial electrification rate design.	To provide efficient rate design for beneficial technologies in New York State that is equitable for all residential customers.
*PSC-42-18-00013-P	..... exempt	Petition for clarification and rehearing of the Smart Solutions Program Order.	To address the increased demand for natural gas in the Con Edison's service territory and the limited pipeline capacity.
*PSC-44-18-00016-P	..... exempt	Petition for approval of gas metering equipment.	To ensure that customer bills are based on accurate measurements of gas usage.
*PSC-45-18-00004-P	..... exempt	Proposed transfer of two natural gas pipeline operating companies, and for lightened and incidental regulation	To consider transfer if there is no market power or ratepayer harm, incidental regulation, and continuing lightened regulation
*PSC-45-18-00005-P	..... exempt	Notice of intent to submeter electricity and waiver of energy audit	To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place
*PSC-47-18-00008-P	..... exempt	Proposed Public Policy Transmission Needs/ Public Policy Requirements, as defined under the NYISO tariff.	To identify any proposed Public Policy Transmission Needs/Public Policy Requirements for referral to the NYISO.
PSC-01-19-00004-P	..... exempt	Advanced Metering Infrastructure.	To determine whether Niagara Mohawk Power Corporation d/b/a National Grid should implement advanced metering infrastructure.
PSC-01-19-00013-P	..... exempt	Order of the Commission related to caller ID unblocking.	To require telephone companies to unblock caller ID on calls placed to the 311 municipal call center in Suffolk County.
PSC-01-19-00014-P	..... exempt	To modify provisions for accepting new or additional gas service applications when there is inadequate supply or capacity.	To continue to provide safe and reliable service to existing customers.
PSC-01-19-00015-P	..... exempt	To modify provisions for accepting new or additional gas service applications when there is inadequate supply or capacity.	To continue to provide safe and reliable service to existing customers.
PSC-01-19-00016-P	..... exempt	To modify provisions for accepting new or additional gas service applications when there is inadequate supply or capacity.	To continue to provide safe and reliable service to existing customers.
PSC-02-19-00014-P	..... exempt	Petition for use of electric metering equipment.	To ensure that consumer bills are based on accurate measurements of electric usage.
PSC-03-19-00002-P	..... exempt	DPS Staff White Paper for who must be trained in 16 NYCRR Part 753 requirements and how the Commission will approve trainings.	To reduce damage to underground utility facilities by requiring certain training and approving training curricula.
PSC-04-19-00004-P	..... exempt	Con Edison's petition for the Gas Innovation Program and associated budget.	To pursue programs that continue service reliability and meet customer energy needs while aiding greenhouse gas reduction goals.
PSC-04-19-00011-P	..... exempt	Update of revenue targets.	To ensure NYAW's rates are just and reasonable and accurately reflect the needed revenues.

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<b>PUBLIC SERVICE COMMISSION</b>			
PSC-06-19-00005-P	..... exempt	Consideration of the Joint Utilities' proposed BDP Program.	To to expand opportunities for low-income households to participate in Community Distributed Generation (CDG) projects.
PSC-07-19-00009-P	..... exempt	Whether to impose consequences on AAA for its non-compliance with Commission requirements.	To insure the provision of safe and adequate energy service at just and reasonable rates.
PSC-07-19-00016-P	..... exempt	Participation in New York State Lifeline Program.	To encourage enhanced services for low-income customers.
PSC-09-19-00009-P	..... exempt	Amendments to the tariff of Con Edison pertaining to interruptible gas service customers.	To consider the appropriate tariff provisions for Con Edison interruptible gas service customers.
PSC-09-19-00010-P	..... exempt	Non-pipeline alternatives report recommendations.	To consider the terms and conditions applicable to gas service.
PSC-10-19-00006-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-12-19-00004-P	..... exempt	To test innovative pricing proposals on an opt-out basis.	To provide pricing structures that deliver benefits to customers and promote beneficial electrification technologies.
PSC-13-19-00010-P	..... exempt	New Commission requirements for gas company operator qualification programs.	To make pipelines safer with improved training of workers who perform construction and repairs on natural gas facilities.
PSC-13-19-00012-P	..... exempt	Paperless billing credit.	To provide just and reasonable rates.
PSC-16-19-00005-P	..... exempt	Proposed major electric delivery revenue requirement increase of approximately \$485 million (or 4.6% in total revenues).	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
PSC-16-19-00007-P	..... exempt	Recommendation of the levelization surcharge, changes to the System Improvement Charge, and a one-year stay-out.	To address the issues in NYAW's petition dated February 25, 2019.
PSC-16-19-00008-P	..... exempt	Proposed major rate increase in Con Edison's gas delivery revenues of approximately \$210 million (or 9.1% in total revenues).	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
PSC-18-19-00010-P	..... 04/30/20	Energy efficiency programs, budgets, and targets for investor-owned utilities.	To encourage the delivery and procurement of energy efficiency by investor-owned utilities.
PSC-18-19-00011-P	..... exempt	Policies, budgets and targets for support of heat pump deployment by investor-owned utilities.	To encourage the support for heat pump deployment by investor-owned utilities.
PSC-18-19-00012-P	..... 04/30/20	Policies, budgets and targets for support of energy efficiency programs for low- and moderate-income customers.	To encourage the support of energy efficiency programs for low- and moderate-income customers by investor-owned utilities.
PSC-18-19-00013-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-18-19-00015-P	..... exempt	Minor rate filing.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
PSC-19-19-00013-P	..... exempt	Proposed merger of three water utilities into one corporation.	To determine if the proposed merger is in the public interest.
PSC-19-19-00014-P	..... exempt	Establishment of the regulatory regime applicable to an approximately 124 MW electric generating facility.	Consideration of a lightened regulatory regime for an approximately 124 MW electric generating facility.
PSC-19-19-00016-P	..... exempt	Establishment of the regulatory regime applicable to an approximately 242 MW electric generating facility.	Consideration of a lightened regulatory regime for an approximately 242 MW electric generating facility.
PSC-20-19-00008-P	..... exempt	Reporting on energy sources	To ensure accurate reporting and encourage clean energy purchases
PSC-20-19-00009-P	..... exempt	Petition to submeter electricity	To ensure adequate submetering equipment and consumer protections are in place
PSC-20-19-00010-P	..... exempt	Compensation policies for certain CHP projects	To consider appropriate rules for compensation of certain CHP resources
PSC-20-19-00015-P	..... exempt	Establishment of the regulatory regime applicable to an approximately 105.8 MW electric generating facility	Consideration of a lightened regulatory regime for an approximately 105.8 MW electric generating facility
PSC-22-19-00013-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-23-19-00003-P	..... exempt	Ownership interest in poles.	To consider the transfer of ownership interest in certain poles from NYSEG to Verizon.
PSC-23-19-00005-P	..... exempt	Proposed major rate increase in SWNY's annual base revenues of approximately \$31.5 million (or 19.8% in total revenues).	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
PSC-27-19-00007-P	..... exempt	Implementation of consolidated billing for distributed energy resources.	To facilitate development of and participation in Community Distributed Generation projects.
PSC-30-19-00007-P	..... exempt	Use of electric metering equipment.	To ensure that consumer bills are based on accurate measurements of electric usage.
PSC-30-19-00009-P	..... exempt	An Index REC procurement mechanism for Tier 1 REC procurements.	To provide a hedge against market volatility, and lower costs to both renewable generators and customers.
PSC-31-19-00011-P	..... exempt	Electric metering equipment.	To ensure that consumer bills are based on accurate measurements of electric usage.
PSC-31-19-00013-P	..... exempt	Implementation of Statewide Energy Benchmarking.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
PSC-31-19-00014-P	..... exempt	Consideration of NYAW's Interim Implementation Plan.	To ensure NYAW improves its service to ratepayers.
PSC-31-19-00015-P	..... exempt	Proposed major rate increase in KEDNY's gas delivery revenues by \$236.8 million (13.6% increase in total revenues).	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
PSC-31-19-00016-P	..... exempt	Proposed major rate increase in KEDLI's gas delivery revenues of approximately \$49.4 million (or 4.1% in total revenues).	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
PSC-32-19-00008-P	..... exempt	Compensation of distributed energy resources	To ensure just and reasonable rates, including compensation, for distributed energy resources
PSC-32-19-00009-P	..... exempt	Petition to submeter electricity and waiver request	To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place
PSC-32-19-00010-P	..... exempt	Notice of intent to submeter electricity	To ensure adequate submetering equipment and consumer protections are in place
PSC-32-19-00012-P	..... exempt	Standby Service Rates and Buyback Service Rates	To ensure just and reasonable rates, including compensation, for distributed energy resources
PSC-32-19-00013-P	..... exempt	Disposition of tax refunds received by New York American Water Company, Inc.	To determine the disposition of tax refunds and other related matters
PSC-33-19-00007-P	..... exempt	Transfer of street lighting facilities.	To determine whether to provide written consent for the proposed transfer of certain street lighting facilities.
PSC-33-19-00009-P	..... exempt	Transfer of street lighting facilities.	To determine whether to provide written consent for the proposed transfer of certain street lighting facilities.
PSC-33-19-00014-P	..... exempt	Electric metering equipment.	To ensure that consumer bills are based on accurate measurements of electric usage.
PSC-34-19-00015-P	..... exempt	Major electric rate filing.	To consider a proposed increase in RG&E's electric delivery revenues of approximately \$31.7 million (or 4.1% in total revenues).
PSC-34-19-00016-P	..... exempt	Major gas rate filing.	To consider a proposed increase in RG&E's gas delivery revenues of approximately \$5.8 million (or 1.4% in total revenues).
PSC-34-19-00017-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-34-19-00018-P	..... exempt	Major electric rate filing.	To consider a proposed increase in NYSEG's electric delivery revenues of approximately \$156.7 million (10.4% in total revenues).
PSC-34-19-00020-P	..... exempt	Major gas rate filing.	To consider a proposed increase in NYSEG's gas delivery revenues of approximately \$6.3 million (or 1.4% in total revenues).
PSC-35-19-00006-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-35-19-00008-P	..... exempt	Compensation of distributed energy resources.	To ensure just and reasonable rates, including compensation, for distributed energy resources.
PSC-36-19-00009-P	..... exempt	Minor rate filing to increase annual electric revenues.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
PSC-36-19-00010-P	..... exempt	Notice of intent to submeter electricity and waiver of energy audit.	To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
PSC-36-19-00011-P	..... exempt	Minor electric rate filing to increase annual electric revenues.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
PSC-37-19-00004-P	..... exempt	Proposed transfer of Hopewell's assets to the Town and dissolution of the company.	To determine if transfer of the water system to the Town of East Fishkill is in the public interest.
PSC-38-19-00002-P	..... exempt	Petition to submeter electricity	To ensure adequate submetering equipment and consumer protections are in place
PSC-39-19-00013-P	..... exempt	Proposed revisions to Consolidated Edison's Commercial Demand Response Programs.	To consider appropriate rules regarding Commercial Demand Response Programs.
PSC-39-19-00014-P	..... exempt	Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.	To review the gas utilities' reconciliation of Gas Expenses and Gas Cost Recoveries for the period ending August 31, 2019.
PSC-39-19-00015-P	..... exempt	Amendments to the New York State Standardized Interconnection Requirements (SIR).	To more effectively interconnect distributed generation and energy storage Systems 5 MW or less to the distribution system.
PSC-39-19-00016-P	..... exempt	PSC regulation 16 NYCRR § 86.3(a)(1), (2), (2)(iv), (b)(2), 86.4(b) and 88.4(a)(4).	To consider a waiver of certain regulations relating to the content of an application for transmission line siting.
PSC-39-19-00017-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-39-19-00018-P	..... exempt	Petition to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-39-19-00019-P	..... exempt	Petition for the use of gas metering equipment.	To ensure that consumer bills are based on accurate measurements of gas usage.
PSC-39-19-00020-P	..... exempt	Initial Tariff Schedule, P.S.C. No. 1 - Water.	To ensure safe and adequate service at just and reasonable rates charged to customers without preferences.
PSC-40-19-00006-P	..... exempt	Net energy metering and VDER crediting for eligible New York Power Authority customers.	To ensure safe and adequate service at just and reasonable rates charged to customers without preferences.
PSC-40-19-00007-P	..... exempt	The sharing of ratepayer consumption data.	To allow for consumption based sewer billing and protect ratepayers' consumption data.
PSC-40-19-00008-P	..... exempt	Implementation of consolidated billing for distributed energy resources.	To facilitate development of and participation in Community Distributed Generation projects.
PSC-41-19-00001-EP	..... exempt	Appointment of a temporary operator.	To ensure safe water supply through appointment of a temporary operator.
PSC-41-19-00003-P	..... exempt	A voluntary residential three-part rate that would include fixed, usage and demand charges.	To provide qualifying residential customers with an optional three-part rate.
PSC-41-19-00004-P	..... exempt	To consider acquiring cable television facilities and franchises of 27 municipalities from CCE I to Spectrum NE.	To ensure performance in accordance with applicable cable laws, regulations and standards and the public interest.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
PSC-41-19-00005-P	..... exempt	Tariff modifications to correct the calculation for the VDER Value Stack DRV.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
PSC-42-19-00006-P	..... exempt	Waiver of the prohibition on service to low-income customers by ESCOs.	To consider the petition for an extension of the waiver of the prohibition on service to low-income customers by ESCOs.
PSC-42-19-00007-P	..... exempt	Waiver of the prohibition on service to low-income customers by ESCOs.	To consider the petition for an extension of the waiver of the prohibition on service to low-income customers by ESCOs.
PSC-43-19-00014-P	..... exempt	Petition for the use of electric metering equipment.	To ensure that consumer bills are based on accurate measurements of electric usage.
PSC-43-19-00015-P	..... exempt	Modifications to the Gas Cost Factor and Daily Delivery Service Programs.	To consider a rehearing petition filed by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc.
PSC-43-19-00016-P	..... exempt	Proposed rate filing to increase its semi-annual flat rate.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
PSC-44-19-00003-P	..... exempt	Proposed revisions to Standby Service Rates and Buyback Service Rates.	To ensure just and reasonable rates, including compensation, for distributed energy resources.
PSC-44-19-00004-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-44-19-00005-P	..... exempt	Proposed revisions to Standby Service Rates and Buyback Service Rates.	To ensure just and reasonable rates, including compensation, for distributed energy resources.
PSC-44-19-00006-P	..... exempt	Proposed revisions to Standby Service Rates and Buyback Service Rates.	To ensure just and reasonable rates, including compensation, for distributed energy resources.
PSC-44-19-00007-P	..... exempt	Proposed revisions to Standby Service Rates and Buyback Service Rates.	To ensure just and reasonable rates, including compensation, for distributed energy resources.
PSC-44-19-00008-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-44-19-00009-P	..... exempt	Proposed revisions to Standby Service Rates and Buyback Service Rates.	To ensure just and reasonable rates, including compensation, for distributed energy resources.
PSC-45-19-00011-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-45-19-00012-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-45-19-00013-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-46-19-00007-P	..... exempt	PSC regulation 16 NYCRR 86.3(a)(1), (a)(2) and 88.4(a)(4).	To consider a waiver of certain regulations relating to the content of an application for transmission line siting.
PSC-46-19-00008-P	..... exempt	Wappingers Falls Hydroelectric LLC's facility located in Wappingers Falls, New York.	To promote and maintain renewable electric energy resources.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
PSC-46-19-00009-P	..... exempt	Proposed transfer of certain company property to the Incorporated Village of Sea Cliff.	To determine if the transfer of certain Company property to the Incorporated Village of Sea Cliff is in the public interest.
PSC-46-19-00010-P	..... exempt	To test innovative rate designs on an opt-out basis.	To implement alternative innovative rate designs intended to assess customer behaviors in response to price signals
PSC-47-19-00011-P	..... exempt	Waiver of National Grid's code of conduct to allow for use of its name.	To determine if it is in the public interest to allow for the use of National Grid's name in the weatherization program.
PSC-47-19-00012-P	..... exempt	Transfer of street lighting facilities to the Village of Cayuga Heights.	To consider whether the transfer of street lighting facilities to the Village of Cayuga Heights is in the public interest.
PSC-47-19-00013-P	..... exempt	Compensation of distributed energy resources.	To ensure just and reasonable rates, including compensation, for distributed energy resources.
PSC-47-19-00014-P	..... exempt	Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.	To consider whether a tariff waiver and the proposed terms of a service agreement are in the public interest.
PSC-47-19-00015-P	..... exempt	Customer Consent to Contact.	To include a new provision establishing customer consent for the utility to contact them electronically about utility service.
PSC-47-19-00016-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-48-19-00004-P	..... exempt	Recommencement of the levelization surcharge, changes to the System Improvement Charge, including AMI and a one-year stay-out.	To address the issues in the November 6, 2019 petition filed by NYAW.
PSC-48-19-00005-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-48-19-00006-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-48-19-00007-P	..... exempt	Extension of the State Universal Service Fund.	To continue to provide universal service at a reasonable rate in certain service territories.
PSC-49-19-00004-P	..... exempt	Transfer of street lighting facilities.	To determine whether to authorize the transfer street of lighting facilities and the proper accounting for the transaction.
PSC-49-19-00005-P	..... exempt	Sale of Street Lighting Facilities to the Town of Farmington.	To consider the transfer of street lighting facilities to the Town of Farmington.
PSC-49-19-00006-P	..... exempt	Waiver of the prohibition on service to low-income customers by ESCOs.	To consider the petition for an extension of the waiver of the prohibition on service to low-income customers by ESCOs.
PSC-50-19-00004-P	..... exempt	Petition to submeter electricity and waiver of energy audit.	To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place.
PSC-50-19-00005-P	..... exempt	Modifications and clarifications to the DCFC Per-Plug Incentive Program.	To clarify certain elements of the DCFC Per-Plug Incentive Program and consider modifications to the Program.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>PUBLIC SERVICE COMMISSION</b>			
PSC-50-19-00006-P	..... exempt	Compensation of and incentives for distributed energy resources.	To encourage the development of and ensure just and reasonable rates for distributed energy resources.
PSC-50-19-00007-P	..... exempt	Participation of customers served under P.S.C. No. 12 (PASNY) in CDG projects receiving Value Stack compensation.	To encourage the development of and ensure just and reasonable rates for distributed energy resources.
PSC-52-19-00001-P	..... exempt	SUEZ Water New York Inc.'s acquisition of 100% of Heritage Hills Water Works Corporation's assets.	To determine if the proposed acquisition is in the public interest.
PSC-52-19-00002-P	..... exempt	The New York State Reliability Council's establishment of an Installed Reserve Margin of 18.9%	To ensure adequate levels of Installed Capacity.
PSC-52-19-00003-P	..... exempt	Notice of intent to submeter electricity and waiver of energy audit.	To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place.
PSC-52-19-00004-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-52-19-00005-P	..... exempt	Compensation of and rates for distributed energy resources.	To encourage the development of and ensure just and reasonable rates for distributed energy resources.
PSC-52-19-00006-P	..... exempt	Authorization to defer pension settlement losses.	To address the ratemaking related to the pension settlement losses.
<b>STATE, DEPARTMENT OF</b>			
DOS-27-19-00014-P	..... 09/04/20	New York State Uniform Fire Prevention and Building Code (the Uniform Code)	To repeal the existing Uniform Code and adopt a new Uniform Code and to make conforming changes to 19 NYCRR Parts 1264 and 1265.
DOS-27-19-00015-P	..... 09/04/20	The State Energy Conservation Construction Code (the "Energy Code").	To repeal the existing Energy Code and to adopt a new, updated Energy Code.
DOS-42-19-00001-P	..... 10/15/20	Real estate advertisements	To update current regulations concerning real estate advertisements
<b>STATE UNIVERSITY OF NEW YORK</b>			
SUN-50-19-00001-EP	..... 12/10/20	Tuition, Fees and Charges	To authorize the waiver of admission application fees for military veterans and their spouses
<b>TAXATION AND FINANCE, DEPARTMENT OF</b>			
TAF-47-19-00010-P	..... exempt	Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.	To set the sales tax component and the composite rate per gallon for the period January 1, 2020 through March 31, 2020.
TAF-50-19-00003-EP	..... 12/10/20	Metropolitan Transportation Business Tax Surcharge	To provide metropolitan transportation business tax rate for tax year 2020

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
<b>TEMPORARY AND DISABILITY ASSISTANCE, OFFICE OF</b>			
TDA-14-19-00007-P	04/02/20	Abandonment of requests for fair hearings	To require the issuance of letters to appellants who fail to appear at scheduled fair hearings involving Medical Assistance, also known as Medicaid, advising them how to request the rescheduling of such fair hearings
TDA-46-19-00006-P	11/12/20	Limits on executive compensation	To remove requirements related to private funding from the \$199, 000 per annum limit on executive compensation and to make corresponding technical updates
TDA-49-19-00003-P	12/03/20	Annual service fee on persons receiving child support services and minimum annual collection requirement to impose such fee	To amend the existing State regulatory provisions regarding the annual service fee imposed on persons who receive child support services
<b>VICTIM SERVICES, OFFICE OF</b>			
OVS-24-19-00001-ERP	06/11/20	Conduct contributing related to burial awards	Adopt rules necessary as the result of chapter 494 of the Laws of 2018, when considering the victim's own conduct
OVS-36-19-00007-P	09/03/20	Limits on administrative expenses and executive compensation.	To codify the determination made in the Matter of Leading Age NY, Inc v. Shah (2018), striking a portion of the rule.
<b>WORKERS' COMPENSATION BOARD</b>			
WCB-31-19-00018-P	07/30/20	Medical Treatment Guidelines	Add guidelines for treatment of hip and groin, foot and ankle, elbow and occupational interstitial lung disease
WCB-32-19-00001-P	08/06/20	Updating the prescription drug formulary	To add drugs to the prescription drug formulary in response to continuous feedback
WCB-37-19-00002-P	09/10/20	Applications for Reopenings	Clarify the process for reopening a case that has been previously closed
WCB-45-19-00010-P	11/05/20	Resolution of medical billing disputes	Incorporate the 2019 changes to WCL 13-g into existing regulations.
WCB-47-19-00004-EP	11/19/20	Updating the prescription drug formulary	To update formulary and add special consideration guidance for drugs not included in the MTGs



# RULE REVIEW

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## Education Department

Section 207 of the State Administrative Procedure Act (SAPA) requires that each State agency review each of its rules which is adopted on or after January 1, 1997 in the calendar year specified in the notice of adoption for the rule, provided that at a minimum every rule shall be initially reviewed no later than in the fifth calendar year after the year in which the rule is adopted, and, thereafter, every rule shall be re-reviewed at five-year intervals, in order to determine whether such rules should be modified or continued without modification.

Pursuant to SAPA section 207, the State Education Department submits the following list of its rules that were adopted during calendar years 2016, 2015, 2014, 2009, 2004 and 1999 that the Department has reviewed and determined should be continued without modification. All section and Part references are to Title 8 of the New York Code of Rules and Regulations.

### A. CALENDAR YEAR 2016 (3 YEAR REVIEW)

2016

#### OFFICE OF P-12 EDUCATION

Sections 100.5 and 100.6 of the Regulations of the Commissioner of Education Relating to the Career Development Occupational Studies (CDOS) Pathway to Graduation

Description of Rule: Career development and occupational studies (CDOS) graduation pathway option

Justification for continuation without modification: To establish a CDOS graduation pathway option for all students who meet the requirements to earn a CDOS Commencement Credential, meet graduation course and credit requirements, and pass four required Regents Exams

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 305(1) and (2), 4402(1 - 7) and 4403(3)

Assessment of public comment: No public comment received

Section 100.5(d)(7) of the Commissioner's Regulations to Expand the Eligible Score Band for the Appeal Process on Regents Examinations Passing Scores

Description of Rule: Appeals process on Regents exams passing score

Justification for continuation without modification: To expand by two additional points the eligible score band for the appeal process on Regents examinations passing scores and to eliminate the minimum attendance eligibility requirement for such appeals.

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided) and 3204(3)

Assessment of public comment: No public comment received.

Sections 200.4, 200.16 and 200.20 of the Commissioner's Regulations Relating to Recommendations for One-to-One Aides for Preschool and School-Age Students with Disabilities and Preschool Special Education Programs and Services

Description of Rule: Preschool special education programs and services

Justification for continuation without modification: To implement certain recommendations for one-to-one aides for preschool and school-age students with disabilities and preschool special education programs and services

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (20), 308(not subdivided), 3214(3), 4401(5), 4402, 4403(3) and 4410(3) and (10)

Assessment of public comment: No public comment received.

Subdivision (ee) of Section 100.2 of the Regulations of the Commissioner of Education Relating to the Methodology by Which School Districts Shall Identify Students in Grades 3-8 Who Receive Academic Intervention Services

Description of Rule: Academic intervention services.

Justification for continuation without modification: Revises methodology for students in grades 3-8 to receive academic intervention services

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided), 3204(3)

Assessment of public comment: No public comment received.

Amendment of section 100.2(gg) of the Regulations of the Commissioner of Education

Description of Rule: Uniform Violent or Disruptive Incident Reporting System (VADIR)

Justification for continuation without modification: To revise the categories of violent and disruptive incidents for VADIR reporting.

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 308, and 2802

Assessment of public comment: No public comment received

#### OFFICE OF HIGHER EDUCATION

Subpart 4-1 of the Rules of the Board of Regents Relating to Voluntary Institutional Accreditation for Title IV Purposes

Description of Rule: Voluntary institutional accreditation for Title IV purposes

Justification for continuation without modification: To clarify existing standards and procedures that must be met by institutions of higher education seeking voluntary accreditation by the Board of Regents and the Commissioner of Education.

Legal Basis of Rule: Education Law sections 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided) and 305(1) and (2).

Assessment of public comment: No public comment received.

Section 52.21 of the Regulations of the Commissioner of Education Relating to Minimum Admission Standards for Graduate-Level Teacher and Educational Leadership Programs and Requirements for the Suspension and/or Deregistration of Certain Programs with Completers Who Fail to Achieve a Minimum Pass Rate on Certification Examinations for Three Consecutive Years

Description of Rule: Graduate-level teacher and educational leadership programs.

Justification for continuation without modification: To establish minimum admission standards for graduate level teacher and leader preparation programs and requirements for the suspension and/or deregistration of certain programs with completers who fail to achieve a minimum pass rate on certification examinations for three consecutive years.

Legal Basis of Rule: Education Law sections 207(not subdivided), 210(not subdivided), 210-a, 210-b, 305(1) and (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1).

Assessment of public comment: No public comment received.

Sections 59.4 and 80-1.3 of the Regulations of the Commissioner of Education Relating to Citizenship Requirements for Professional Licensure and Teacher/Educational Leadership Certification

Description of Rule: Citizenship requirements for professional licensure and certification in teaching and educational leadership service

Justification for continuation without modification: To amend the citizenship requirements for professional licensure and certification in teaching and educational leadership.

Legal Basis of Rule: Education Law sections 207(not subdivided), 210(not subdivided), 215(not subdivided), 305(1) and (2), 3001(1) and (3), 3003(1), 3009(1), 6504(not subdivided) and 6506(1) and (2)

Assessment of public comment: No public comment received.

Section 80-5.4 of the Regulations of the Commissioner of Education Relating to the Employment of Substitute Teachers Without a Valid Teaching Certificate

Description of Rule: Substitute Teachers.

Justification for continuation without modification: To address the issue of school districts having difficulties finding certified teachers to serve as substitute teachers.

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 305(1) and (2), 3001(2), 3004(1), 3006(1), 3007(1) and (2) and 3009(1)

Assessment of public comment: No public comment received.

Section 80-5.8 and 80-5.20 of the Regulations of the Commissioner of Education Relating to Endorsement of Out-of-State Certificates for Service as a Teacher, School District Leader, School District Business Leader and School Building Leader in New York State

Description of Rule: Endorsement of out-of-state certificates for teaching and educational leaders.

Justification for continuation without modification: To provide an alternative pathway for endorsement of out-of-state certificates for service as a teacher or educational leader.

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 305(1) and (2), 3001(2), 3004(1), 3006(1), 3007(1) and (2) and 3009(1)

Assessment of public comment: No public comment received.

Extension of Existing Safety Nets for Candidates Who Take the New Teacher Certification Examinations (ALST, edTPA, EAS and the Redeveloped CSTs)

Description of Rule: Examinations for Teacher Certification

Justification for continuation without modification: Extension of the safety net for certain teacher certification examinations.

Legal Basis of Rule: Education Law sections 207(not subdivided), 215(not subdivided), 305(1) and (2), 3001(2), 3004(1) and 3009(1)

Assessment of public comment: No public comment received.

Sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents Relating to a Hardship Waiver for Independent Evaluators for Annual Professional Performance Reviews for Classroom Teachers and Building Principals Commencing in the 2016-2017 School Year

Description of Rule: Annual Professional Performance Reviews (APPR) of classroom teachers and building principals

Justification for continuation without modification: Provide districts and BOCES with a hardship waiver commencing with the 2016-2017 school year from independent evaluator requirements.

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2), 3009(1), 3012-c and section 3012-d; section 3 of Subpart C of Chapter 20 of the Laws of 2015; and sections 1 and 2 of Subpart E of Part EE of Chapter 56 of the Laws of 2015.

Assessment of public comment: No public comment received.

Amendment of section 30-2.3 and Subpart 30-3 of the Rules of the Board of Regents

Description of Rule: Annual Professional Performance Reviews (APPR) of classroom teachers and building principals

Justification for continuation without modification: Technical Amendments

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2), 3009(1), 3012-c and section 3012-d; section 3 of Subpart C of Chapter 20 of the Laws of 2015; and sections 1 and 2 of Subpart E of Part EE of Chapter 56 of the Laws of 2015.

Assessment of public comment: No public comment received.

#### OFFICE OF THE PROFESSIONS

Amendment of section 61.10 of the Regulations of the Commissioner of Education

Description of Rule: Dental Anesthesia Certification Requirements for Licensed Dentists

Justification for continuation without modification: To conform regulations to the current practice of dental anesthesia administration

Legal Basis of Rule: Education Law §§ 207(not subdivided), 6504(not subdivided), 6506(1), 6507(2)(a), 6601(not subdivided), and 6605-a(2).

Assessment of public comment: No public comment received.

#### OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCESS)

Sections 100.7 and 100.8 of the Commissioner's Regulations related to the National External Diploma Program

Description of Rule: New York State High School Equivalency Diploma

Justification for continuation without modification: To establish the National External Diploma Program (NEDP) as a pathway to earn a NYS High School Equivalency Diploma

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1) and (2), 309(not subdivided) and 3204(3).

Assessment of public comment: No public comment received.

Section 126.14 of the Regulations of the Commissioner of Education relating to interest penalties for late annual assessment fees paid by licensed private career schools

Description of Rule: Interest penalties for late annual assessment fees paid by licensed private career schools

Justification for continuation without modification: To conform regulations to reflect current practices

Legal Basis of Rule: Education Law section 207(not subdivided), 305(1) and (2) and 5001(9)

Assessment of public comment: No public comment received.

#### B. CALENDAR YEAR 2015 (4 YEAR REVIEW)

2015

#### OFFICE OF P-12 EDUCATION

Section 100.5(d)(7) of the Commissioner's Regulations related to English Language Learners

Description of Rule: Graduation Requirements for English Language Learners

Justification for continuation without modification: To allow ELLs who enter the United States in 9th grade or above in the 2010-11 school year and thereafter to graduate with a Local Diploma if they score between 55 and 59 on the Regents Exam in English and meet all other conditions for appeal of a Regents score

Legal Basis of Rule: Education Law sections 101(not subdivided),

207(not subdivided), 208(not subdivided), 209(not subdivided), 215(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided), 2117(1) and 3204(2), (2-a), (3) and (6)

Assessment of public comment: No public comment received.

Sections 100.2 & 100.5 of the Commissioner's Regulations related to Multiple Pathways

Description of Rule: Pathways to Graduation

Justification for continuation without modification: To establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs, and to prescribe new unit of credit and examination requirements for social studies.

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided) and 3204(3)

Assessment of public comment: No public comment received.

Sections 100.4(e)(2) and 100.18(b)(14) of the Commissioner's Regulations to provide flexibility to school districts and charter schools regarding the administration of Regents Examinations in Mathematics to grades 7 and 8 students.

Description of Rule: Regents Examinations in Mathematics

Justification for continuation without modification: To provide flexibility to LEAs in the administration of Regents mathematics examinations students in grades 7-8

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2) and (20), 308(not subdivided), 309(not subdivided), 3204(3) and 3713(1) and (2)

Assessment of public comment: No public comment received.

#### OFFICE OF HIGHER EDUCATION

Amendment of 8 NYCRR sections 52.21, 80-1.5, 80-3.3, 80-3.4 and 80-5.13 and addition of section 80-1.5(c). Creation of Safety Nets for Candidates Who Take the New Teacher Certification Examinations (ALST, EAS and the Redeveloped CSTs) and an Extension of the Safety Net for the edTPA

Description of Rule: Examinations for teacher certification.

Justification for continuation without modification: Purpose of the rule: To provide a safety net for candidates who take the new teacher certification examinations (ALST, EAS, and the redeveloped CSTs) and to extend the time validity of the existing edTPA safety net.

Legal Basis of Rule: Education Law sections 207(not subdivided), 305(1) and (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1)

Assessment of public comment: No public comment received.

#### C. CALENDAR YEAR 2014

##### OFFICE OF P-12 EDUCATION

Section 135.4(c)(7)(ii)(d) of the Commissioner's Regulations relating to Duration of Competition in High School Athletics

Description of Rule: Duration of competition in high school athletics

Justification for continuation without modification: To eliminate the one additional season limit on waivers for students with disabilities to participate in athletic competition.

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) & (2), 803(not subdivided), and 3204(2) & (3).

Assessment of public comment: No public comment received.

Sections 154.2 and 154.3 of the Regulations of the Commissioner of Education Relating to Examination Requirements for Identifying Pupils with Limited English Proficiency

Description of Rule: Requires the use of the New York State Identification Test for English Language Learners (NYSITELL) for purposes of identifying pupils with limited English Proficiency.

Justification for continuation without modification: To implement policy adopted by the Board of Regents by specifying a new test, the

New York State Identification Test for English Language Learners (NYSITELL) for purposes of identifying pupils with limited English proficiency.

Legal Basis of Rule: Education Law sections 207(not subdivided), 208(not subdivided), 215(not subdivided), 305(1) and (2), 2117(1) and 3204(2), (2-a), (3) and (6).

Assessment of public comment: No public comment received.

Sections 200.1, 200.5, and 200.16 of the Regulations of the Commissioner of Education Relating to Special Education Impartial Hearings

Description of Rule: Special education impartial hearing timelines

Justification for continuation without modification: To align the State timelines for rendering a decision with federal regulations, address certain deficiencies in the process and to ensure that impartial hearings are carried out in the most effective and efficient manner for the benefit of both parties. In addition, the rule further ensures the impartiality and availability of impartial hearing officers.

Legal Basis of Rule: Education Laws sections 101(not subdivided), 207(not subdivided), 305(1) and (2) and (20), 3214(3)(g), 4402(1) and (2), 4403(3), 4404(1) and 4410(7)(b) and (13).

Assessment of public comment: No public comment received.

Section 100.5(g)(2) of the Regulations of the Commissioner of Education relating to the transition to Common Core-aligned Regents Examinations in Mathematics (Geometry)

Description of Rule: Regents Examination in Geometry

Justification for continuation without modification: To provide flexibility in the transition to Common Core-aligned Regents Examinations in Mathematics by allowing, for a limited time and at the discretion of the applicable school district, students receiving Geometry (Common Core) instruction to take the Regents Examination in Geometry aligned to the 2005 Learning Standards in addition to the Regents Examination in Geometry (Common Core), and meet the mathematics requirement for graduation by passing either examination

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided) and 3204(3).

Assessment of public comment: No public comment received.

Sections 100.5 and 100.18 of the Commissioner's Regulations, relating to miscellaneous Common Core transition issues

Description of Rule: Common Core Transition

Justification for continuation without modification: To transition to the Common Core English Language Arts (ELA) and mathematics examinations in the following areas: (1) students with disabilities local diplomas; (2) Regents diploma with advanced designation; (3) credit by examination; and (4) transfer credit; and enact technical changes.

Legal Basis of Rule: Education Law sections 101, 207, 208, 209, 305, 308, 309 and 3204

Assessment of public comment: No public comment received.

Sections 200.7, 200.15 and 200.22 of the Regulations of the Commissioner of Education Relating to Chapter 501 of the Laws of 2012 ("Protection of People with Special Needs Act")

Description of Rule: Protection of people with special needs

Justification for continuation without modification: To conform the regulations to Chapter 501 of the Laws of 2012, which enacted into law various provisions of legislation for the protection of people with special needs, including revisions to sections 4212, 4314, 4358 and 4403 of Education Law

Legal Basis of Rule: Education Law sections 101, 207, 3208, 3602, 4002, 4308, 4355, 4401, 4402 and 4403

Assessment of public comment: No public comment received.

Section 102.4 of the Regulations of the Commissioner of Education Relating to Mandatory Reporting Requirements and Testing Misconduct

Description of Rule: State assessment security

Justification for continuation without modification: To enhance the

security of the State assessment program by prohibiting certain testing misconduct, establishing a mandatory reporting requirement for certain school personnel who learn of any security breach or other testing misconduct, and to sanction those who fail to comply.

Legal Basis for Rule: Education Law sections 207 (not subdivided), 225(1)-(11) and 305(1) and (2) and Civil Service Law section 75-b(2)(a)

Assessment of public comment: No public comment received.

Section 100.5(g)(2) of the Regulations of the Commissioner, relating to the transition to Common Core-aligned Regents Examinations in Mathematics (Geometry)

Description of Rule: Transition to Common Core-aligned Regents Exams

Justification for continuation without modification: To provide flexibility in the transition to Common Core-aligned Regents Examinations in Mathematics by allowing, for a limited time and at the discretion of the applicable school district, students receiving Geometry (Common Core) instruction to take the Regents Examination in Geometry aligned to the 2005 Learning Standards in addition to the Regents Examination in Geometry (Common Core), and meet the mathematics requirement for graduation by passing either examination.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided) and 3204(3)

Assessment of public comment: No public comment received.

Sections 100.4(e)(2) and 100.18(b)(14) of the Commissioner's Regulations to provide flexibility to school districts and charter schools regarding the administration of Regents Examinations in Mathematics to grade 7 and 8 students

Description of Rule: Elementary and Secondary Education Act (ESEA) Flexibility and school and school district accountability

Justification for continuation without modification: To provide flexibility to LEAs in the administration of Regents mathematics examinations to students in grades 7-8

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2) and (20), 308(not subdivided), 309(not subdivided), 3204(3) and 3713(1) and (2)

Assessment of public comment: No public comment received.

Sections 100.4(d)(4), 100.4(e)(4) and 100.18(b)(14) of the Regulations of the Commissioner of Education Relating to administration of Regents Examinations and Assessments in Science to Students in Grades 7 and 8

Description of Rule: Science intermediate assessments

Justification for continuation without modification: To provide flexibility to schools in the administration of Regents science assessments to students in grades 7-8

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2) and (20), 308(not subdivided), 309(not subdivided) and 3204(3)

Assessment of public comment: No public comment received.

Section 200.5 of the Regulations of the Commissioner of Education Relating to Parental Consent for Initial Provision of Special Education Services in a 12-month Special Service and/or Program

Description of Rule: Parental consent for the initial provision of special education services/programs to a student with a disability for July/August

Justification for continuation without modification: To conform the Commissioner's Regulations to section 16-a of Part A of Chapter 56 of the Laws of 2014.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207 (not subdivided), 305(1) and (2) and (20), 4402(2), 4403(3) and section 16-a of Part A of Chapter 56 of the Laws of 2014.

Assessment of public comment: No public comment received.

Section 100.17 of the Regulations of the Commissioner of Education Relating to the Distinguished Educator Program

Description of Rule: Distinguished Educators

Justification for continuation without modification: To modify criteria for appointment, roles, responsibilities, protocols and procedures for distinguished educators to ensure that they are better able carry-out their statutory responsibilities and functions to assist low performing schools pursuant to Education Law sections 211-b and 211-c.

Legal Basis for Rule: Education Law §§ 207, 305(1), (2) and (20), 211-b(1-5), and 211-c(1-8)

Assessment of public comment: No public comment received.

Section 276.11 of the Regulations of the Commissioner, relating to appeals to the Commissioner under Education Law §§ 310 and 2853(3)(e)

Description of Rule: Appeals to Commissioner of Education relating to New York City charter school co-location sites

Justification for continuation without modification: To implement Education Law § 2853(3)(e), as added by § 5 of Part BB of Chapter 56 of the Laws of 2014

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 310(1), (4), (6) and (7), 311(1-4) and 2853(3)(e), as added by § 5 of Part BB of Chapter 56 of the Laws of 2014

Assessment of public comment: No public comment received.

Sections 100.2(II) and 104.3, 100.3(b)(2), 100.4(b)(2), and 100.4(e) of the Regulations of the Commissioner relating to Promotion Determinations

Description of Rule: Student promotion/placement and permanent records and transcripts, and grades 3-8 State ELA and Mathematics assessments

Justification for continuation without modification: Conform Commissioner's Regs to Ed. Law section 305(45), (46) and (47), as added by Subparts B and C of Part AA of L. 2014, Ch.56

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), (20), (45), (46) and (47), 308(not subdivided), 309(not subdivided) and 3204(3) and Subparts B and C of Part AA of Chapter 56 of the Laws of 2014.

Assessment of public comment: No public comment received.

Sections 100.3, 151-1.2 and 151-1.3 of the Commissioner's Regulations, relating to Traditional Standardized Tests in Grades Pre-K through 2

Description of Rule: Traditional standardized tests administration

Justification for continuation without modification: To prohibit administration of traditional standardized tests in prekindergarten programs and in grades kindergarten through two.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), (20), (44), 308(not subdivided), 309(not subdivided), 3204(3) and 3602-e(12) and (15) and Subpart A of Part AA of Chapter 56 of the Laws of 2014.

Assessment of public comment: No public comment received.

Section 100.18 of the Regulations of the Commissioner relating to New York State's ESEA Flexibility Renewal Request, Annual Measurable Objectives, and Removal of Certain Focus Schools From Accountability Designation Without Replacement

Description of Rule: Elementary and Secondary Education Act (ESEA) Flexibility and school and school district accountability

Justification for continuation without modification: To partially implement New York State's ESEA Flexibility Waiver Renewal with respect to Annual Measurable Objectives (AMOs)

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 210(not subdivided), 215(not subdivided) 305(1), (2) and (20), 308(not subdivided), 309(not subdivided), 3204(3) and 3713(1) and (2)

Assessment of public comment: No public comment received.

Sections 200.16(c) and 200.20(b) of the Regulations of the Commissioner of Education Relating to Special Education Services and Programs for Preschool Children with Disabilities

Description of Rule: Special Education Services and Programs for Preschool Children with Disabilities

Justification for continuation without modification: To implement L. 2013, Ch. 545, relating to committee on preschool special education (CPSE) placement of a child in an approved program that also conducted an evaluation of the child, and qualifications for executive directors of approved preschool programs

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (20), 308(not subdivided), 4401(1) - (11), 4402(1) - (7), 4403(1)-(5), (9), (11), (13), (15) and (20), 4410(1) - (5), (9), (9-a), (9-b), (9-d), (10), (11) and (13) and sections 1 and 2 of Chapter 545 of the Laws of 2013

Assessment of public comment: No public comment received.

Section 100.5(d) of the Commissioner's Regulations Relating to Transfer High School Credit for Students in State Agency Educational Programs

Description of Rule: Provide transfer credit for students in an educational program administered by a State Agency pursuant to Education Law § 112

Justification for continuation without modification: Provide transfer credit for students in a State Agency educational program upon attestation of chief program administrator

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1) and (2) and 309(not subdivided)

Assessment of public comment: No public comment received.

Section 100.5(d)(6) of the Regulations of the Commissioner relating to Expansion of Integrated Credits in Approved CTE Programs

Description of Rule: Career and Technical Education (CTE)

Justification for continuation without modification: To expand from four to eight the number of required credits in English, science, mathematics and social studies that may be fulfilled through specialized courses, integrated CTE courses, or a combination of specialized and integrated CTE courses.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 215(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided) and 3204(3).

Assessment of public comment: No public comment received.

Addition of Subparts 154-1 and 154-2 of the Commissioner's Regulations

Description of Rule: Pupils with Limited English Proficiency

Justification for continuation without modification: To prescribe requirements for bilingual education and English as a New Language programs for English Language Learners

Legal Basis for Rule: Education Law sections 207(not subdivided), 208(not subdivided), 215(not subdivided), 305(1) and (2), 2117(1), 2854(1)(b) and 3204(2), (2-a), (3) and (6)

Assessment of public comment: No public comment received.

Section 100.18(b)(14) and 100.18(b)(15) of the Regulations of the Commissioner, Relating to Definition of Performance Levels for State Assessments and the Calculation of the Performance Index Based on the Student Performance Levels

Description of Rule: School accountability - high school performance levels and performance index

Justification for continuation without modification: To align Commissioner's Regulations with the June 2014 Board of Regents approval of the cut points for the five performance levels on the new Common Core Regents Examinations in English language arts and mathematics.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2) and (20), 308(not subdivided), 309(not subdivided), 3204(3) and 3713(1) and (2).

Assessment of public comment: No public comment received.

Addition of Subpart 154-3 of the Commissioner's Regulations

Description of Rule: Pupils with Limited English Proficiency (English Language Learner [ELL] programs) Who Are Students with Disabilities

Justification for continuation without modification: To prescribe identification/exit procedures for students with disabilities in ELL programs

Legal Basis for Rule: Education Law sections 207(not subdivided), 208(not subdivided), 215(not subdivided), 305(1) and (2), 2117(1), 2854(1)(b) and 3204(2), (2-a), (3) and (6)

Assessment of public comment: No public comment received.

Sections 57-1.1 and 135.4 and addition of Section 135.7 of the Regulations of the Commissioner of Education, relating to Child Abuse and Maltreatment Identification and Reporting Coursework or Training for Coaches

Description of Rule: Child abuse identification and reporting coursework or training for coaches.

Justification for continuation without modification: To conform Commissioner's Regulations to Education Law section 3036, as added by Chapter 205 of the Laws of 2014.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) & (2), 803(not subdivided), 3204(2) & (3) and 3036(1) and (2) and Chapter 205 of the Laws of 2014.

Assessment of public comment: No public comment received.

Amendments to Subpart 154-2 of the Commissioner's Regulations

Description of Rule: Pupils with Limited English Proficiency.

Justification for continuation without modification: To make certain technical amendments; to amend § 154-2.3(f)(3) to allow parents an additional five days to return to the school district the signed notification form regarding student placement; and to amend § 154-2.3(k) to permit school districts to apply for an exemption from the professional development requirements addressing the needs of English Language Learners under certain circumstances.

Legal Basis for Rule: Education Law sections 207(not subdivided), 208(not subdivided), 215(not subdivided), 305(1) and (2), 2117(1), 2854(1)(b) and 3204(2), (2-a), (3) and (6).

Assessment of public comment: No public comment received.

#### OFFICE OF HIGHER EDUCATION

Section 80-1.1(b)(47) of the Regulations of the Commissioner of Education Relating to the Definition of Part-Time Experience for Permanent or Professional Certification

Description of Rule: Definition of Part-Time Experience for Permanent or Professional Certification.

Justification for continuation without modification: To amend the definition of a year of experience for permanent or professional certification to provide candidates serving as substitute teachers with an alternative to meet the part-time continuous service experience requirements.

Legal Basis for Rule: Education Law sections 207 (not subdivided), 305(1), 3001(2), 3006(1)(a),(b) and 3009(1).

Assessment of public comment: No public comment received.

Sections 52.21, 80-1.1, 80-3.3 and 80-3.5 of the Commissioner's Regulations Relating to the Extension of the Availability of a Transitional A Certificate to Career and Technical Education Titles (Mechanical Technology 7-12, Electrical-Electronic Technology 7-12 and Computer Technology 7-12,) and the Family and Consumer Science Career and Technical Education Subjects (Food and Nutrition, Textile and Design, Human Services and Family studies) and the Addition of an Option for College Professors to Use Post-Secondary Teaching Experience in Lieu of Work Experience for Certification in the CTE Subjects

Description of Rule: Teacher certification requirements for career and technical education titles.

Justification for continuation without modification: To extend the availability of a Transitional A certificate to the technical titles within the career and technical education (CTE) titles and the Family and

Consumer Science CTE subjects, and to allow an option for college professors to use postsecondary teaching experience in lieu of work experience to gain certification in CTE subjects.

Legal Basis for Rule: Education Law sections 207, 305, 3001, 3004, 3006 and 3009.

Assessment of public comment: No public comment received.

Section 30-2.1 of the Rules of the Board of Regents to Define Performance for Purposes of Termination Decisions for Probationary Teachers Relating to Annual Professional Performance Reviews (APPR)

Description of Rule: Termination Decisions for Probationary Teachers Based on Annual Professional Performance Reviews (APPR)/

Justification for continuation without modification: To define performance for purposes of termination decisions for probationary teachers related to APPRs.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2) and 3012-c.

Assessment of public comment: No public comment received.

Part 80 of the Regulations of the Commissioner of Education relating to reciprocity requirements for classroom teachers

Description of Rule: Reciprocity requirements for classroom teachers.

Justification for continuation without modification: To establish a standardized reciprocity process for the review of teaching candidates from other jurisdictions.

Legal Basis for Rule: Education law sections 207 (not subdivided), 305(1) and (2), 3001(2), 3004(1), 3006(1)(b), 3007(1) and (2) and 3009(1).

Assessment of public comment: No public comment received.

Section 52.21 and Part 80 of the Regulations of the Commissioner of Education to Provide Teacher Candidates, who Apply for Teacher Certification Prior to June 30, 2015 and Who Take and Fail the Teacher Performance Assessment (edTPA), with the Option of Obtaining an Initial Certificate if the Candidate Passes the ATS-W Prior to June 30, 2015 and Subsequent to Receiving His/Her Score on the edTPA or Who Pass the ATS-W Prior to the Requirements for the New Certification Examinations and Who Takes and Fails the edTPA Prior to June 30, 2015

Description of Rule: Flexibility Relating to Teacher Performance Assessment (edTPA).

Justification for continuation without modification: To provide teacher Candidates, who apply for teacher certification prior to June 30, 2015 and who take and fail the teacher performance assessment (edTPA), with the option of either: (1) taking and passing the ATS-W after receipt of his/her failing score on the edTPA and prior to June 30, 2015, or (2) if the candidate had previously passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the edTPA prior to June 30, 2015, the candidate will be issued an initial certificate (this applies to Transitional B program candidates who apply for an initial certificate as well).

Legal Basis for Rule: Education Law sections 207(not subdivided), 305(1) and (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1)

Assessment of public comment: No public comment received.

Proposed Amendment to Section 52.21 of the Regulations of the Commissioner of Education

Description of Rule: The requirements for student teaching, field experience and practica for teacher education preparation programs.

Justification for continuation without modification: To provide teaching candidates with the option of completing a single teaching placement instead of two 20 day placements in a registered teacher education programs if certain conditions are met and to extend the sunset date for the clinically rich teacher education pilot program from June 30, 2016 to October 1, 2016.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210(not subdivided) 305(1) and (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1).

Assessment of public comment: No public comment received.

#### OFFICE OF THE PROFESSIONS

Section 65.8 of the Regulations of the Commissioner of Education relating to Podiatric Ankle Surgery Privileges

Description of the Rule: Podiatric ankle surgery privileges.

Justification for continuation without modification: Required by State statute (Chapter 438 of the Laws of 2012).

Legal Basis of Rule: Education Law sections 207, 6507, 7001 and 7009, and Chapter 438 of the Laws of 2012.

Assessment of public comment: No public comment received.

Sections 79-9.4, 79-10.4, 79-11.4 and 79-12.4 of the Regulations of the Commissioner of Education relating to the Duration of Limited Permits for Applicants Seeking Licensure as Mental Health Practitioners under Article 163 of the Education Law

Description of the Rule: The duration of limited permits for certain applicants for licensure as mental health counselors, marriage and family therapists, creative arts therapists or psychoanalysts.

Justification for continuation without modification: To conform the Regulations of the Commissioner of Education to Chapter 485 of the Laws of 2013 that amended Article 163 of the Education Law by standardizing the duration of limited permits for applicants seeking licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst at two years for the initial permit with the possibility of up to two one-year extensions, at the discretion of the Department.

Legal Basis for Rule: Education Law sections 207, 6501, 6504, 6507, 6508, 8409, and Chapter 485 of the Laws of 2013

Assessment of public comment: No public comment received.

Section 74.10 of the Regulations of the Commissioner of Education Relating to Continuing Education Requirements for Licensed Master Social Workers and Licensed Clinical Social Workers

Description of the Rule: Continuing education requirements for licensed master social workers and licensed clinical social workers.

Justification for continuation without modification: To conform the Regulations of the Commissioner of Education to Chapter 443 of the Laws of 2013 that added Section 7710 of the Education Law which requires licensed master social workers and licensed clinical social workers to complete 36 hours of mandatory continuing education when registering to practice in New York State, effective January 1, 2015. The rule also establishes standards for the Department's approval of continuing education providers, defines acceptable continuing education subjects and educational activities, establishes requirements when there is a lapse in practice, institutes requirements for licensees under conditional registration, and sets fees for licensees and providers.

Legal Basis for Rule: Sections 207, 212, 6504, 6507 and 7710 of the Education Law and Chapter 443 of the Laws of 2013.

Assessment of public comment: No public comment received.

Section 63.11 of the Regulations of the Commissioner of Education Relating to Interpretation and Translation Services for Limited English Proficient (LEP) Individuals by Mail Order Pharmacies

Description of Rule: Interpretation and translation services for Limited English Proficient (LEP) individuals by mail order pharmacies.

Justification for continuation without modification: To implement section 6829(4) of the Education Law, as added by Part V of Chapter 57 of the Laws of 2012.

Legal Basis for Rule: Sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6810(1) and 6829(4) of the Education Law, and Part V of Chapter 57 of the Laws of 2012.

Assessment of public comment: No public comment received.

Sections 52.12 and 64.8 of the Regulations of the Commissioner of Education Relating to Certification of Clinical Nurse Specialists and Nurse Practitioners under Article 139 of the Education Law

Description of Rule: Certification as a clinical nurse specialist (CNS).

Justification for continuation without modification: To implement Chapter 364 of the Laws of 2013.

Legal Basis for Rule: Sections 207(not subdivided), 212(3), 6504(not subdivided), 6507(2)(a), 6910(1), (2), (3), (4), and (5), 6911(1) and (2) of the Education Law, and Chapter 364 of the Laws of 2013.

Assessment of public comment: No public comment received.

Amendment to Sections 29.2 and 29.7 of the Rules of the Board of Regents and Sections 63.6 and 63.8 of the Regulations of the Commissioner of Education to Implement Part D of Chapter 60 of the Laws of 2014, Relating to the Registration and Regulation of Outsourcing Facilities.

Description of Rule: Outsourcing facilities engaged in the compounding of sterile drugs.

Justification for continuation without modification: To implement L.2014, Ch.60, Part D by establishing criteria for registration of outsourcing facilities.

Legal Basis for Rule: Education Law sections 207(not subdivided), 212(3), 215(not subdivided), 6504(not subdivided), 6507(2)(a), 6509(1-11), 6802(1-23), 6808(1), (5), (6), (7), 6808-b(1), (4)(f), 6810(14), 6811(26), 6811-a(1), (2), 6812(1), 6817(1) and 6831(1-14) of the Education Law, and Part D of Chapter 60 of the Laws of 2014.

Assessment of public comment: No public comment received.

Section 29.14 of the Rules of the Board of Regents and Section 64.5 of the Regulations of the Commissioner of Education Relating to the Regulation of Nurse Practitioner Practice

Description of Rule: Nurse Practitioner Collaborative Relationships.

Justification for continuation without modification: To implement Part D of Chapter 56 of the Laws of 2014.

Legal Basis for Rule: Sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6509(9), and 6902(3) of the Education Law, and Part D of Chapter 56 of the Laws of 2014.

Assessment of public comment: No public comment received.

Section 61.9 of the Regulations of the Commissioner of Education Relating to the Practice of Dental Hygiene Pursuant to Collaborative Arrangements

Description of Rule: Dental Hygiene Collaborative Arrangements.

Justification for continuation without modification: To implement Chapter 239 of the Laws of 2013.

Legal Basis for Rule: Sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6606(1) and (2), 6608, and 6611(10) of the Education Law, and Chapter 239 of the Laws of 2013.

Assessment of public comment: No public comment received.

D. CALENDAR YEAR 2009

OFFICE OF P-12 EDUCATION

Section 100.2(p) – Differentiated Accountability

Description of Rule: The purpose of the rule is to implement the No Child Left Behind (NCLB) Differentiated Accountability Pilot Program in order to increase the percentage of schools designated for Improvement that are able to make adequate yearly progress for two consecutive years and be returned to Good Standing.

Justification for continuation without modification: The rule is necessary to conform the Commissioner's Regulations with New York State's approval to participate in the No Child Left Behind (NCLB) Differentiated Accountability Pilot Program, as granted by the United States Department of Education (USED) on January 8, 2009.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2) and (20), 309(not subdivided) and 3713(1) and (2).

Assessment of public comment: No public comment received.

Section 100.5 – Special Education Safety Net Extension

Description of Rule: The rule extends the existing regulatory requirements of section 100.5 of the Regulations of the Commissioner of Education relating to the Regents Competency Test (RCT) safety net for students with disabilities.

Justification for continuation without modification: The rule extends the RCT safety net for an additional year to make it available to all students with disabilities entering grade nine in the 2010-11 school

year. Extending the RCT safety net provided time for the Regents and Department to fully analyze all of the policy issues concerning graduation, including policy implications for students with disabilities.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1) and (2), 308(not subdivided) and 309(not subdivided).

Assessment of public comment: No public comment received.

Section 135.4 – Physical Education, Coaching and Interscholastic Athletics

Description of Rule: The rule provides flexibility for school districts that have organized their 5th and 6th grades into a middle school, by revising the physical education instruction requirements for elementary programs to include provisions for pupils in grades 5 and 6 who attend a middle school. The rule also specifies the qualifications of those to be appointed (whether paid or unpaid) by school districts to fill existing athletic coaching positions, clarifies evidential requirements for extension of eligibility for interscholastic athletics, and adds provisions permitting coaches to apply to the Commissioner for extensions to complete required coursework.

Justification for continuation without modification: The Office of the State Comptroller Audit on Physical Education recommended the change in regulation to accommodate districts with middle schools and the New York State Public High School Athletic Association and the New York State Athletic Administrators' Association have actively pursued a change in Commissioner's Regulation section 135.4(c)(7)(i)(c), relating to the educational requirements of coaches, the timelines to complete required course work and duration of competition for athletes.

The prior regulations did not provide flexibility for school districts that have organized their 5th and 6th grades into a middle school. The rule revises the physical education instruction requirements for elementary programs to include provisions for pupils in grades 5 and 6 who attend a middle school. The rule eliminates scheduling and staffing issues in middle level schools. The change effected by the rule was listed in the recommendations of the Office of the State Comptroller Audit on Physical Education and recommended by administrators in middle level buildings.

Furthermore, the prior regulations did not reflect equality of coaching requirements for certified teacher coaches and non-teacher coaches. In addition, new teachers are required to complete a Master's degree within five years of receiving their baccalaureate. This has affected the time available to new coaches to complete the required coaching courses and has affected the number of certified teacher coaches available to school districts for appointment as an interscholastic athletic coach. The rule establishes equal timelines for coaches to complete required course work, extends the time for completing requirements, provides authority for additional extensions for individuals who have had a lapse in service due to extenuating circumstances, and clarifies extension of eligibility for interscholastic athletes. New York State Education Department oversight and control over the required instruction and coaching regulations remain intact.

The rule also clarifies the extension of eligibility rule to provide that in order to be an acceptable cause for extending a student's eligibility for interscholastic athletics, the chief school officer must present sufficient evidence that includes documentation showing that the student's education plan has been extended to a fifth year as a direct result of the illness, accident or other circumstance beyond the control of the student.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 803(5) and 3204(2).

Assessment of public comment: No public comment received.

Section 174.2 – Computation of nonresident pupil tuition rate

Description of Rule: The rule conforms the Commissioner's Regulations to changes in State statutes and corrects technical deficiencies.

Justification for continuation without modification: The rule is necessary to reflect the Foundation Aid provisions enacted by Chapter 57 of the Laws of 2007 and to otherwise bring the Commissioner's Regulations into compliance with those changes to the law.

Legal Basis for Rule: Education Law sections 207, 3202(4)(d) and 3602.

Assessment of public comment: No public comment received.

Sections 200.1, 200.2, 200.4, 200.5, 200.6, 200.9 & 200.15 – Federal/State Conform Regulations

Description of Rule: The rule accomplishes the following:

- adds the definition of declassification support services consistent with the definition of such term in section 3202(i)(2) of the Education Law;
- conforms State regulations to federal requirements relating to participation in regular class, parent consent, including revocation of parent consent for special education and related services, and meeting notice;
- repeals language in the prior notice requirements relating to provision of a free appropriate public education after graduation with the receipt of a local high school or Regents diploma to be consistent with Education Law; and
- conforms State regulations to Chapter 323 of the NYS Laws of 2008 relating to procedures for prevention of abuse, maltreatment or neglect of students in residential placements.

Justification for continuation without modification: The rule is necessary to conform State regulations to federal regulations (34 CFR Part 300) and New York State (NYS) Social Services Law and Mental Hygiene Law, as amended by Chapter 323 of the Laws of 2008; and to make certain technical amendments, including correction of cross citations.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207 (not subdivided), 3208(1-5), 3602(i)(2), 3713(1) and (2), 4002(1-3), 4308(3) and 4355(3), 4401(2- 9), 4402(1-7) and 4410(13), and Chapter 323 of the Laws of 2008.

Assessment of public comment: No public comment received.

#### OFFICE OF HIGHER EDUCATION

Sections 3.47, 3.48, and 3.50 – Masters of Study in Law

Description of Rule: The rule amends section 3.47(c) to delete the phrase “specialized study” from the definition of liberal arts content. The rule also creates a new degree title, Master of Studies in Law (M.S.L.), in the category of Professional Degrees and Specialized Degrees. The rule also adds a new section 3.48(c) to authorize community colleges to award honorary associate degrees in accordance with section 6306(5-b) of the Education Law.

Justification for continuation without modification: The amendment to section 3.47(c) clarifies the distinction between such content in an undergraduate degree program and courses directed toward a specific occupational or professional objective. The amendment to section 3.50, creating the M.S.L., makes a non-licensure legal education available to non-lawyers. The amendment to section 3.48(c) authorizes community colleges to award honorary associate degrees in accordance with section 6306(5-b) of the Education Law.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided), 218(1), 224(4), 305(1) and (2) and 6306(5-b).

Assessment of public comment: No public comment received.

Sections 30-1.1, 30-1.2, 30-1.9, 80-1.1 and 80-5.21 – Teacher tenure area – instructional support services.

Description of Rule: The rule establishes qualifications and tenure and/or seniority rights for teachers performing instructional support services, and thus permits teachers employed in instructional support service positions in BOCES and school districts to receive tenure and seniority rights in a tenure area for which they are properly certified. (The regulations do not impact teachers serving in the New York City School District.)

Justification for continuation without modification: The rule is necessary because the number of individuals serving in these types of positions has grown considerably in the past three decades and these positions have never been formally recognized as being educational in nature under section 35-g of the Civil Service Law. The effect is that teachers serving in these positions currently are not eligible to accrue tenure and seniority rights in any tenure area. Under the rule, these

positions become part of the unclassified service, require an appropriate teaching certificate, and would be subject to Education Law in regard to appointment and tenure.

Legal Basis for Rule: Education Law section 207.

Assessment of public comment: No public comment received.

Sections 80-1.2, 80-1.6, 80-1.8, 80-5.9 – Processing and Requirements for Teacher’s Certificates.

Description of Rule: The rule imposes reasonable limits on transcript evaluation by limiting the length of time an application for a certificate will remain in active status to three years and limiting the number of evaluations an applicant can receive to two. Additional evaluations will require submission of a new application and fee. The rule imposes a \$50 fee for the issuance of an internship certificate, the same fee that the Department collects for all other college-recommended certificates. The rule specifies that certificates may be issued in electronic and/or paper format, in order to implement a policy change from the issuance of time limited certificates, in favor of a web based verification system. The rule only allows a holder of a provisional certificate to qualify for a time extension if he/she has passed the appropriate New York State Teacher Certification Examination content specialty test(s). The rule also streamlines the requirements for the reissuance of an initial certificate by requiring passage of the applicable Content Specialty Test(s) only if the certificate has been expired for more than two years, eliminates the requirement that the teacher submit evidence of being unable to secure a teaching position to qualify, establishes a uniform professional development requirement of 75 hours and requires that a candidate complete the 75 hours of professional development within one year of applying to the department for the reissued initial certificate.

Justification for continuation without modification: The rule is needed to streamline certificate evaluations and the processing of certificates under Part 80 of the Regulations of the Commissioner of Education, in light of the reduction in available resources to the State Education Department to perform these functions, in order to continue to provide core teacher certification services to school districts and candidates seeking a certificate in teaching, allow evaluation staff to work on more critical evaluation functions, and reduce the processing time for applicants.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210, 212, 305, 3001, 3003, 3004, 3006, 3007, 3009 and 3604.

Assessment of public comment: No public comment received.

80-1.2, 80-1.6, 80-2.2, 80-2.9, 80-3.6, 80-4.3, 80-5.6, 80-5.7 and 80-5.9 – Patriot Plan

Description of Rule: The rule implements the provisions of the Patriot Plan by reducing the professional development requirement for certificate holders called to active duty for the time of such active service. The rule also extends the validity of teaching certificates for members of the military called to active duty for the period of such active service and an additional 12 months from the end of such service.

Justification for continuation without modification: The rule is necessary to implement the provisions of the Patriot Plan, which was enacted by the Legislature in Chapter 106 of the Laws of 2003. The Patriot Plan was enacted by the Legislature to recognize members of the military who are called to active duty so that such members are not discriminated against based upon their military status in areas such as housing, employment and education.

Legal Basis for Rule: Education Law sections 207, 210, 212, 305, 3001, 3004 and 3006.

Assessment of public comment: No public comment received.

Sections 80-2.9, 80-4.3 and 80-5.18 – Supplementary Extension in Bilingual Education

Description of Rule: The purpose of the rule is to establish a supplementary bilingual education extension to enable a certified teacher or pupil personnel service professional to provide bilingual instruction or services, in a demonstrated shortage area, while the teacher or pupil personnel service professional completes the remaining course requirements necessary to qualify for a bilingual extension. The supplementary bilingual education extension is valid for three years from its effective date and will not be renewable. It will be limited to

employment with an employing entity. Due to continuing shortages of classroom teachers in certain certificate titles (including but not limited to mathematics, the sciences and special education) and in certain geographic areas, the rule also removes the sunset date of September 1, 2009 for supplementary certificates, which authorizes a teacher certified in the classroom teaching service to teach in a different title when there is a demonstrated shortage of certified teachers, while the teacher is engaged in study at an institution of higher education to complete any necessary requirements to qualify for the new certificate.

**Justification for continuation without modification:** The rule is needed to facilitate the State's ability to address persistent shortages of certified teachers and pupil personnel service professionals (such as school psychologists, school counselors and school social workers) who are qualified to provide bilingual instruction and services. The rule creates a practical mechanism for certified teachers and pupil personnel professionals to earn this additional credential, while continuing to be employed as a classroom teacher or pupil personnel service provider. The rule prescribes clearly defined standards to ensure the quality of the education of teachers and pupil personnel professionals certified in bilingual education. The rule is designed to support the Department's continuing efforts to certify a sufficient number of properly qualified candidates to fill the need for bilingual instruction and support services in the State's schools.

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 305(1), (2) and (7); 3001(2); 3004(1) and 3006(1)(b).

**Assessment of public comment:** No public comment received.

**Section 145-2.15 – Administration of Ability-to-Benefits Tests for purposes of Eligibility for Student Aid Awards**

**Description of Rule:** The rule clarifies the requirements for the independent administration of ability-to-benefit tests, for purposes of eligibility for student aid awards.

**Justification for continuation without modification:** The rule replaces the phrase "assessment center" with "testing center to avoid confusion with the different meaning of "assessment center" in federal regulations governing the administration of HEA Title IV student aid funds (34 CFR 668.142). The rule also adds to the existing prohibition on test center employees, a prohibition on not only the use of any person employed through the admissions, student financial aid, or registrar's offices at an institution, but a prohibition on the use of any employee who performs the duties of such offices. The rule also requires that the scoring of an ability-to-benefit test be "in accordance with the test publisher's instructions." The rule requires that tests, results, and databases be kept "secure" instead of "in locked and secured containers", in light of the fact that tests may be offered on computer as well as in paper-and-pencil format. The rule also eliminates the prohibition against an institution employing a former student as a test administrator because it is unnecessarily restrictive, given the other constraints § 145-2.15 of the Commissioner's regulations places on the administration of ability-to-benefit tests. The rule also amends section 145-2.15(e) to clarify that in order for the Department to consider a test "independently administered", it must be administered at one of the following locations: (1) a testing center that is not located at and/or affiliated with the institution for which the student is seeking enrollment; (2) a degree-granting institution that confers two-year or four-year degrees or an institution that qualifies as an eligible public vocational institution provided that the chief executive officer certifies annually that certain procedures have been followed; or (3) an eligible non-degree granting institution that is not a public vocational institution provided that the test is given by a test administrator meeting certain requirements delineated in the rule.

**Legal Basis for Rule:** Education Law sections 207(not subdivided) and 661(4).

**Assessment of public comment:** No public comment received.

#### OFFICE OF THE PROFESSIONS

**Sections 29.7 & 63.3 – Pharmacy Electronic Records and Residency**

**Description of Rule:** The rule enables licensed pharmacists to maintain required records in electronic format, and provides applicants seeking licensure in pharmacy with an alternative to passing a Depart-

ment administered practical examination, one of three examinations that a pharmacist must complete to become licensed.

**Justification for continuation without modification:** As a general rule, licensed professionals are allowed to maintain records electronically. Pharmacy rules and regulations, however, previously retained references to hard-copy records, despite the extremely large volume of records contemporary community and hospital pharmacies generate. The rule removed this requirement and allows pharmacists and pharmacies the option of converting records to a secure, electronic format. The rule encourages greater acceptance of electronic prescribing which has been shown to be effective in reducing medication errors.

Pharmacists seeking licensure in New York State previously were required to complete a three-part series of examinations. The third part of the examination is a Department prepared and administered practical examination that tests candidates' abilities to actually compound and dispense medications, including sterile products. This examination is labor intensive, and the Department has been reviewing effective alternatives. An increasing number of pharmacy graduates voluntarily enroll in accredited residency programs wherein their knowledge and skills are further developed and confirmed. The rule authorizes the Department to accept a certification from the residency program director, attesting to the applicant's attainment of specified skills and competencies within an accepted residency program in lieu of successful completion of the current practical examination. The rule is similar to recent changes made in the licensure of dentists, who are now required to complete a dental residency in lieu of the previously administered practical examination. The rule permits an applicant to either complete certain competencies as part of an approved residency program or complete a Department administered practical examination.

Additionally, since 2009, these sections have been amended to conform with statutory amendments.

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1), 6507(2)(a), 6507(4)(h), 6509(9), 6801(not subdivided) 6805(3) and 6810(4) and (5) of the Education Law.

**Assessment of public comment:** No public comment received.

**Sections 29.10, 52.13 & Part 70 – Public Accountancy**

**Description of Rule:** The rule enacts requirements in the following areas of professional licensure or practice impacted by Chapter 651 of the Laws of 2008:

(1) **Commission and referral fees.** In order to ensure that certified public accountants (CPAs) and public accountants (PAs) working in private industry or providing non-attest services through a public accounting firm may continue to receive commissions/referrals, the rule defines as unprofessional conduct in the practice of public accountancy the receipt of a commission or referral fee by a licensee or the public accounting firm employing such licensee for the referral of any product or service to a client if the licensee is performing certain attest and compilation services. The purpose of the rule is to retain the independent judgment of the CPA or PA. The rule also defines as unprofessional conduct the failure of a CPA or PA to provide specific written disclosure to a client when the licensee is performing professional services other than certain attest or compilation services for which a licensee may not receive a commission, and the licensee receives a commission or referral fee for recommending the products or services of a third party to the client.

(2) **Firm Registration.** Chapter 651 of the Laws of 2008 requires the Commissioner to establish a registration process for public accounting firms. The rule requires all firms (including sole proprietorships, partnerships, LLPs, LLCs, and PCs) to maintain a registration with the Department if the firm is performing attest or compilation services or using the title "CPA" or "CPA firm" or the title "PA" or "PA firm." Firms performing only non-attest services described in Education Law § 7401(3) are not required to, but may, register with the Department. The rule requires firms applying for registration with the Department to provide a list of all offices within New York State and a list of all states or jurisdictions in which the firm maintains offices. It also requires firms to list any past denial, revocation or suspension of a

registration or permit by any other state or jurisdiction within the past three years. The Board of Regents may revoke a firm's registration or take other disciplinary action against a firm to the same extent as an individual licensee, or pursuant to a settlement in which the firm neither admits nor denies the allegations of professional misconduct, or based upon other grounds including failure to undergo the required quality review every three years.

(3) Continuing Professional Education ("CPE"). Chapter 651 of the Laws of 2008 amends Education Law § 7409 to change the tracking year for CPE credit from a September 1 – August 31 year to a January 1 – December 31 year. The changes also allow licensees to meet their annual CPE requirement by completing either 40 credits in any combination of allowable subject areas or by completing 24 credits concentrated in any one subject area. Before this change, licensees were required to complete 40 credits in a combination of the following areas: accounting, auditing or taxation, or 24 credits concentrated, in either accounting, auditing or taxation. The legislation also requires that any licensed CPA or PA that engages in the new definition of public practice in § 7401 meet the CPE requirements. Any licensee who does not engage in public practice as defined in § 7401 may file a written request for an exemption from CPE. The rule implements these statutory changes, deletes prior exemptions from mandatory CPE for individuals who work in private industry or government and specifies that all registered CPAs and PAs are required to pay a CPE fee of \$50.

(4) Registration and Use of Professional Title. The rule requires CPAs and PAs to maintain an active registration with the Department if the licensee is practicing public accountancy or using the title "certified public accountant" or "public accountant" or the designation "CPA" or "PA." Licensees not practicing public accountancy or not using the title may request inactive status from the Department by filing a form to be approved by the Department requesting such status.

(5) Non-attest Services Performed by Out-of-State Licensed CPAs. Existing law was amended to add Education Law § 7406-a to authorize out-of-state CPAs to perform non-attest services such as accounting, management advisory, financial advisory, and tax in New York without a permit or license. As a condition of practicing in New York under this provision, the CPA and the firm that employs him or her agrees to be subject to the disciplinary authority of the Board of Regents; to comply with Article 149 of the Education Law, the Rules of the Board of Regents and the Regulations of the Commissioner of Education and to the appointment of the Secretary of State or other public official acceptable to the Department. The rule amends the Rules of the Board of Regents by defining as unprofessional conduct the willful or grossly negligent failure of an out-of-state CPA practicing non-attest services pursuant to Education Law § 7406-a to comply with substantial provisions of Federal, State or local laws, rules or regulations.

Justification for continuation without modification: The rule is necessary to conform the Commissioner's Regulations to Chapter 651 of the Laws of 2008. Additionally, since 2009, these sections have been amended to conform with statutory amendments and for review of policy reasons.

Legal Basis for Rule: Education Law §§ 207(not subdivided), 6501(not subdivided), 6504(not subdivided), 6506(1), (2) and (6), 6507(2)(a), (3), (4)(a), 6508 (1) and §§ 7401, 7401-a, 7402, 7404, 7406, 7406-a, 7408, 7409 and 7410 and Chapter 651 of the Laws of 2008.

Assessment of public comment: No public comment received.

Section 77.10 – Physical therapy continuing education requirements

Description of Rule: The rule establishes mandatory continuing education requirements and the process for the Department's approval of sponsors of such continuing education.

Justification for continuation without modification: The rule is necessary to implement the requirements of Chapter 563 of the Laws of 2008.

Legal Basis for Rule: Education Law sections 207(not subdivided), 212(3), 6504(not subdivided), 6507(2)(a), and 6742-a(1)(2)(3)(4)(5) and (6); and section 2 of Chapter 207 of the Laws of 2008.

Assessment of public comment: No public comment received.

Section 150.4 – High Needs Nursing

Description of Rule: The purpose of the rule is to extend from June 1 to November 15 of each year the deadline for submission of annual reports certifying the number of students enrolled in a high needs nursing program at such institution.

Justification for continuation without modification: The rule is needed to provide institutions with an adequate amount of time to submit their annual reports.

Legal Basis for Rule: Education Law §§ 207 and 6401-a and Chapter 57 of the Laws of 2008.

Assessment of public comment: No public comment received.

OFFICE OF CULTURAL EDUCATION

Section 90.3 – Public Library Systems

Description of Rule: The rule adds the definition of "developmentally or learning disabled" to the special populations who are served by coordinated outreach. The "Enriched coordinated outreach program" has been replaced with a more appropriate name, the "Family Literacy Library Services Grant Program." Current operations of library systems are more accurately reflected and references to obsolete practices and terms are omitted.

Justification for continuation without modification: The rule is needed to update certain terminology and to clarify procedural requirements in the Commissioner's Regulations relating to the approval of public library systems, specifically the Coordinated Outreach Services, Family Literacy Library Services grant program (formerly the "enriched coordinated outreach programs"), and Adult Literacy Library Services grant programs, in order to conform to Education Law section 273, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute.

Legal Basis for Rule: Education Law sections 207 (not subdivided), 215 (not subdivided), 254 (not subdivided), 255 (1 through 5), 272(1)(h) and 273(1).

Assessment of public comment: No public comment received.

Section 92.1 - State Library's Circulation Policy

Description of Rule: The rule eliminates the restriction that certain State officials registered to borrow from the State Library may only borrow library materials for work-related purposes. The rule simplifies the registration process for a State official by only requiring proof that the individual is a permanent employee of State Government rather than requiring certification by a supervisor at the bureau chief level or above that the individual is currently a permanent employee of a State agency and requires library materials in connection with his or her official duties. The rule allows New York State residents 18 years and older to borrow library materials directly from the State Library if borrowed onsite and imposes a fine upon such individuals for overdue library materials. The rule also restricts the circulation of the only copy, or copy 1, of a New York State document. The rule also simplifies the return policy by providing that materials not returned within six weeks after the due date are considered lost and may be replaced at the borrower's expense. Additionally, the rule clarifies that physicians and attorneys in New York State must be residents of the State as well as licensed to practice in the State in order to borrow library materials. The rule also makes technical amendments, including grammatical and stylistic changes.

Justification for continuation without modification: The rule is necessary to conform the Commissioner's Regulations to the State Library's current policy and practice relating to borrowing circulating library materials.

Legal Basis for Rule: Education Law sections 207 (not subdivided) and 249 (not subdivided).

Assessment of public comment: No public comment received.

Part 188 – State Government Archives and Records Management

Description of Rule: The rule revises and clarifies various provisions of the regulations, especially those pertaining to replacing original records with microforms, the retention and preservation of electronic records, the disposition of damaged records, and fees for records management services and the storage of records at the State records center.

Justification for continuation without modification: The rule is needed to update and clarify various provisions of Part 188. In particular, revisions to section 188.13 establish procedures to authorize the destruction of damaged records. Revisions to section 188.18 clarify and modernize requirements for replacing original records with microforms. Revisions to section 188.20 clarify and modernize requirements for the retention and preservation of electronic records. Revisions to section 188.21 update the list of agencies paying fees for records management services and the fee for storing records at the State records center. These changes establish improved and uniform standards for State government records management operations.

Legal Basis for Rule: Education Law section 207(not subdivided) and Arts and Cultural Affairs law section 57.05(9)

Assessment of public comment: No public comment received.

#### OFFICE OF OPERATIONS AND MANAGEMENT SERVICES

##### Section 3.2(b) – Chancellor Emeritus

Description of Rule: The rule provides that a Chancellor Emeritus, who is also a current member of the Board of Regents, is an ex officio member of each standing committee of the Board of Regents.

Justification for continuation without modification: The Board of Regents has determined that this provision is appropriate and necessary to assist the Board of Regents to effectively meet its responsibilities to govern the University of the State of New York, determine the educational policies of the State and oversee the State Education Department.

Legal Basis for Rule: Education Law section 207(not subdivided).

Assessment of public comment: No public comment received.

#### E. CALENDAR YEAR 2004

##### OFFICE OF P-12 EDUCATION

##### Section 156.3 – Nonpublic School Bus Drivers

Description of Rule: The rule conforms the Commissioner's Regulations to Chapter 270 of the Laws of 2003 by applying the school bus safety practices instruction and retraining requirements for public school bus drivers to nonpublic school bus drivers.

Justification for continuation without modification: The rule is needed to implement the statutory requirements of Chapter 270 of the Laws of 2003. The rule will help to insure the safety of the 2.3 million students transported on school buses each day in New York State by applying, as required by Chapter 270 of the Laws of 2003, school bus safety practices instruction and retraining requirements prescribed pursuant to Education Law section 3624 to drivers who operate transportation which is owned, leased or contracted for by private and parochial schools to the same extent as such requirements apply to drivers who operate transportation which is owned, leased or contracted for by public school districts.

Legal Basis for Rule: Education Law §§ 207, 305(34) and 3624 and Chapter 270 of the Laws of 2003.

Assessment of public comment: No public comments received.

##### Section 155.26 – Qualified Public Educational Facilities Bonds

Description of Rule: The rule establishes procedures, consistent with State and federal law, for the allocation of the State's qualified public educational facility bond limitation pursuant to 26 USC section 142(k).

Justification for continuation without modification: The rule is needed to implement the provisions of 26 USC section 142 by establishing the process for the allocation of the State's Qualified Public Educational Facilities (QPEF) bond limitation amount to local educational agencies within the State.

Legal Basis for Rule: Education Law §§ 101, 207, 305(1) and (2) and 3713(1) and (2) and 26 USC 142(a) and 142(k).

Assessment of public comment: No public comments received.

##### Section 164.1(g) – Education for Gainful Employment (EDGE) Program

Description of Rule: The rule updates the Commissioner's Regulations by replacing references to the job opportunities and basic skills (JOBS) program with references to the Education for Gainful Employment (EDGE) program.

Justification for continuation without modification: The rule is needed to replace references to the Jobs Opportunities and Basic Skills Training (JOBS) program and the Aid to Families with Dependent Children (AFDC) program with, respectively, the Education for Gainful Employment (EDGE) program and Temporary Assistance for Needy Families (TANF) program. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. Law 104-193) repealed the JOBS and AFDC programs, and created the TANF program. The rule sets forth the description, eligibility criteria and allowable activities for programs funded under the Welfare Education Program (WEP). A portion of WEP is sub-allocated for a match for TANF funds to create the EDGE program, which is administered in partnership with the State Department of Labor.

Legal Basis for Rule: Education Law §§ 207, 3713(1) and (2) and § 1 of Chapter 53 of the Laws of 2003.

Assessment of public comment: No public comment received.

Sections 8.2, 8.3 and 100.7 – Admission to and Passing Mark on Regents Examinations and College Credits to Meet High School Equivalency Diploma Requirements.

Description of Rule: The rule implements policy enacted by the Board of Regents relating to admission to and passing mark for Regents examinations and high school equivalency diploma requirements.

Justification for continuation without modification: The rule requires principals of public schools to admit to Regents examinations a candidate who is a school district resident and who seeks to take such examinations for the purpose of meeting the requirements for an earned degree pursuant to Regents Rule section 3.47(a)(2). This provision is consistent with amendments to Regents Rules that establish an additional pathway for students beyond compulsory school age to earn a college degree by having passed and successfully completed all requirements for the following Regents examinations or the approved alternative assessments for these examinations: Comprehensive English, mathematics, U.S. history and government, global history and geography, and a science. The rule makes a technical change to add the citation in Regulations of the Commissioner of Education (section 100.5[a][5][i]) where there is an exception to the 65 passing mark on Regents examinations. The rule changes the subject distribution of the 24 college semester hours required for a pathway to earn a high school equivalency diploma. Provision is made to transition to the revised subject distribution that is anticipated to become effective September 30, 2004. The revised subject distribution will be consistent with recent amendments to Regents Rules relating to the satisfactory evidence candidates who are beyond compulsory school age must provide to degree-granting institutions to earn a college degree. The rule reduces the semester hour requirement in mathematics from six to three, eliminates the three semester hours in career and technical education and/or foreign languages, and allows a candidate to complete six semester hours in courses within the registered degree program.

Legal Basis for Rule: Education Law §§ 101, 207, 208, 209, 305, 308, 309 and 3204.

Assessment of public comment: No public comment received.

##### Section 164.2 – Adult Literacy Education Aid

Description of Rule: The rule amends certain requirements for not-for-profit organizations applying for adult literacy education grants and deletes references to obsolete provisions.

Justification for continuation without modification: The rule is needed to provide not-for-profit organizations with increased flexibility in offering adult literacy education (ALE) programs, which are designated by the commissioner to serve persons who are receiving public assistance, who are unemployed, or who are economically or educationally disadvantaged, by deleting the 10-pupil minimum class size requirement and the requirement that ALE programs meet certain frequency and duration criteria set forth in section 168.3(b)(5) and (6), relating to Employment Preparation Education programs. This will extend eligibility for State aid to not-for-profit ALE providers serving small populations, such as in situations involving one-on-one tutoring or small groups of no more than 4 students, in which students receive between 1 to 3 hours of instruction per week. The rule also deletes obsolete references to section 167.3(b) and 167.4, which applied to

programs funded under the federal Job Training Partnership Training Act, which Act was repealed by the Workforce Investment Act of 1998 (Pub.L. 105-220).

Legal Basis for Rule: Education Law § 207 and § 1 of Chapter 53 of the Laws of 2003.

Assessment of public comment: No public comment received.

Section 200.1(i) and (h) Definitions

Description of Rule: The rule corrected certain citations and terms and replaced references to the term “paraprofessional” with the term “supplementary school personnel” in the definitions of class size and paraprofessional.

Justification for continuation without modification: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal No Child Left Behind (NCLB) Act (Public Law 107-110).

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.2(b)(11)(iii) Written Policies of the Board of Education

Description of Rule: The rule replaced the reference to the term “paraprofessional” with the term “supplementary school personnel.”

Justification for continuation without modification: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal NCLB Act (Public Law 107-110).

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.2(h) Local Comprehensive System of Personnel Development (CSPD) Plan

Description of the Rule: The rule replaced the reference to the term “paraprofessional” with the term “supplementary school personnel”.

Justification for continuation without modification: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal NCLB Act (Public Law 107-110). (The rule was amended in 2005 to repeal requirements for CSPD plans and to require that schools include professional development activities for professional staff and supplementary school personnel staff working with students with disabilities in the professional development plan pursuant to section 100.2 of the Commissioner’s Regulations.)

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.4(e)(3)(ii) and (iii) Individualized Education Program (IEP) Implementation

Description of the Rule: The rule replaced references to the term “paraprofessional” with the term “supplementary school personnel.”

Justification for continuation without modification: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal NCLB Act (Public Law 107-110).

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.5(i)(3) Impartial Hearings

Description of the Rule: The rule clarified that the impartial hearing officer (IHO) may not accept appointment unless he or she is available to initiate the hearing within the first 14 days of being appointed; added that the hearing or a prehearing conference must be scheduled to begin within the first 14 days of the IHO’s appointment, unless an extension is granted; added that the IHO may assist an unrepresented party by providing information relating only to the hearing process at all stages of the hearing and that nothing contained in the regulations is to be construed to impair or limit the authority of the IHO to ask questions of counsel or witnesses to clarify or complete the record; added that a prehearing conference with the parties may be scheduled, that such

conference may be conducted by telephone, and that a transcript or a written summary of the prehearing conference must be entered into the record by the IHO; delineated the purposes of the prehearing conference; required, except as provided for in section 201.11, that each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party’s evaluations that the party intends to use at the hearing at least five business days prior to a hearing; added that the IHO, wherever practicable, must enter into the record a stipulation of facts and/or joint exhibits agreed to by the parties; added that the IHO may receive any oral, documentary or tangible evidence except that the IHO must exclude evidence that he or she determines to be irrelevant, immaterial, unreliable or unduly repetitious and that the IHO may receive testimony by telephone, provided that such testimony must be made under oath and must be subject to cross examination; added that the impartial hearing officer may limit examination of a witness by either party whose testimony the IHO determines to be irrelevant, immaterial or unduly repetitious; added that the IHO may limit the number of additional witnesses to avoid unduly repetitious testimony; added that the IHO may take direct testimony by affidavit in lieu of in-hearing testimony, provided that the witness giving such testimony must be made available for cross examination; added that the IHO may receive memoranda of law from the parties not to exceed 30 pages in length, with typed material in minimum 12 point type (footnotes minimum 10 point type) and not exceeding 6 1/2 by 9 1/2 inches on each page, and added that each party will have up to one day to present its case unless the IHO determines that additional time is necessary for a full, fair disclosure of the facts required to arrive at a decision and that additional hearing days, if required, must be scheduled on consecutive days wherever practicable.

Justification for continuation without modification: The rule is necessary to prescribe procedures for the conduct of impartial hearings to comply with the Individuals with Disabilities Education Act (IDEA) and its implementing regulations.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (20), 4402(1), 4403(3) and 4404(1).

Assessment of public comment: No public comment received.

Section 200.5(i)(4) Impartial Hearing Officer Decisions

Description of the Rule: The rule provides that in cases where extensions of time have been granted beyond the applicable required timelines, the decision must be rendered and mailed no later than 14 days from the date the IHO closes the record and the date the record is closed must be indicated in the decision; provides that each extension of time granted by the IHO must be for no more than 30 days; added that the IHO may grant a request for an extension only after fully considering the cumulative impact of the following factors: (a) the impact on the child’s educational interest or well-being which might be occasioned by the delay; (b) the need of a party for additional time to prepare or present the party’s position at the hearing in accordance with the requirements of due process; (c) any financial or other detrimental consequences likely to be suffered by a party in the event of delay; and (d) whether there has already been a delay in the proceeding through the actions of one of the parties; added that absent a compelling reason or a specific showing of substantial hardship, a request for an extension shall not be granted because of school vacations, a lack of availability resulting from the parties’ and/or representatives’ scheduling conflicts, settlement discussions between the parties or other similar reasons and that the agreement of the parties is not a sufficient basis for granting an extension; added that the IHO shall respond in writing to each request for an extension and the response shall become part of the record; added that the IHO may render an oral decision to an oral request for an extension, but must subsequently provide that decision in writing and include it as part of the record, and for each extension granted, the IHO must set a new date for rendering his or her decision and notify the parties in writing of such date; provided that the IHO shall determine when the record is closed and notify the parties of the date the record is closed; required the decision to reference the hearing record to support the findings of fact and that the IHO attach to the decision a list identifying each exhibit admitted into evidence by date, number of pages and exhibit number or letter;

and required the decision to include an identification of all other items the IHO has entered into the record.

Justification for continuation without modification: The rule is necessary to prescribe procedures for the conduct of impartial hearings to comply with the IDEA and its implementing regulations.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (20), 4402(1), 4403(3) and 4404(1).

Assessment of public comment: No public comment received.

Section 200.6(g)(4)(i)-(iii) Special Class Size for Students with Disabilities

Description of the Rule: The rule replaced references to the term “paraprofessional” with the term “supplementary school personnel.”

Justification for continuation without modification: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal NCLB Act (Public Law 107-110). (The rule was amended in 2007 to re-letter section 200.6(g) to section 200.6(h).)

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.9(f)(2)(x) Tuition Reimbursement Methodology-Integrated Special Class Programs

Description of the Rule: The rule replaced references to the term “paraprofessional” with the term “supplementary school personnel.”

Justification for continuation without modification: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal NCLB Act (Public Law 107-110).

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.16(h)(3)(iii)(b) Special Education Programs and Services-Special Classes

Description of the Rule: The rule replaced the reference to the term “paraprofessional” with the term “supplementary school personnel.”

Justification for continuation without modification: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal NCLB Act (Public Law 107-110). (The rule was amended in 2005 to re-letter section 200.16(h) to section 200.16(i).)

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

#### OFFICE OF HIGHER EDUCATION

80-3.3, 80-3.7, 80-4.3 and 80-4.4 Individual evaluation and other requirements for teacher certification

Description of Rule: The rule establishes requirements for classroom teaching certification through the individual evaluation of candidates who have not completed registered teacher education programs, streamline examination requirements for candidates who already hold classroom teaching certification, establish coursework requirements for extensions and annotations of certificates, and remove unnecessary certification requirements. These new requirements apply to candidates who apply for certification in a classroom title after February 1, 2004.

Justification for continuation without modification: The amendment is needed to streamline the current examination requirements for the issuance of additional certificates to individuals already holding a classroom teaching certification. In such cases, candidates need only pass the content specialty test in the area for which application is made because they have already shown pedagogical competence through meeting requirements for the original certificate. It also is needed to require a candidate for the initial certificate under Option B in a specific career and technical subject to pass the communication and quantitative skills test, which is a necessary assessment for these candidates who do not hold a college degree.

The amendment is needed to remove unnecessary provisions in Commissioner’s regulations. It removes requirements applicable to candidates who complete out-of-state teacher education programs that are not registered by the State Education Department and not offered by an institution that is a party to the interstate agreement on the qualifications of educational personnel. It also removes education requirements for candidates who already hold certification in another area. These provisions will not be needed because the new individual evaluation requirements will apply. Finally, the amendment is needed to remove a provision that would establish additional requirements for candidates who have not applied for the initial certificate within two years of completing his or her teacher education program. The Department believes that these additional requirements are unnecessary and removing them will help alleviate the shortage of certified teachers in New York State.

Legal Basis for Rule: Education Law sections 207(not subdivided), 305(1), (2) and (7), 3004(1) and 3006(1)(b).

Assessment of public comment: No public comment received.

Sections 80-1.2, 80-2.12, 80-2.13, 80-3.1, 80-3.5, 80-4.3, 80-5.6 and 80-5.13 – Technical Changes in Requirements for Certification in the Classroom Teaching Service.

Description of Rule: The rule clarifies and corrects omissions in the new requirements for the certification of teachers in the classroom teaching service that became effective on February 2, 2004.

Justification for continuation without modification: The rule is needed to clarify the applicability of the new certification requirements for the classroom teaching service, providing that the new certification requirements will apply to candidates who apply for certification on or after February 2, 2004, unless an exception is otherwise specifically set forth in the regulations. This is needed because a number of exceptions are stated in Part 80 that would permit candidates to meet the old requirements. These candidates already hold some type of certification, and are on the path to certification under the old requirements.

The rule is needed to provide that candidates in the alternative certification programs who applied and qualified for a transitional B certificate on or before February 1, 2004 will be eligible to obtain a provisional certificate, upon meeting the requirements for the provisional certificate. Those applying and qualifying for the transitional B certification after February 1, 2004 will have to apply for the initial certificate and meet the new requirements. This change is necessary as a matter of fairness to permit holders of the transitional B certificate who were already on track for obtaining a provisional certificate under the old requirements to obtain that certificate.

The rule is needed to update the name of the examination for teaching assistants, the “Assessment of Teaching Assistant Skills,” and to specify the correct name for the examination required for an extension in bilingual education, the “bilingual extension assessment.” In addition, it is needed to clarify the language for the general science extension to indicate that study is required in “at least” two additional sciences, rather than in just two additional sciences.

Finally, the rule removes the requirement that a candidate for an extension in career awareness must hold a base teacher certificate in career and technical education. It also removes the requirement that holders of the transitional A certificate must be in a registered teacher education program. The transitional A certificates are in specific career and technical subjects within the field of agriculture, health or a trade (7-12) and are designed to permit career changes who hold an associate degree or high school education to enter the teaching field in these technical areas. The Department does not believe that either of the requirements proposed for removal are necessary.

Legal Basis for Rule: Education Law §§ 207, 305(1), (2), and (7), 3001(2), 3004(1), 3006(1)(b), 3009(1) and 3010.

Assessment of public comment: No public comment received.

Sections 80-1.3, 80-2.1, 80-3.8, 80-3.9 and 80-5.17 – Pathways to Certification in the Classroom Teaching Service.

Description of Rule: The rule clarifies and supplements the new requirements for the certification of classroom teachers that became effective on February 2, 2004.

Justification for continuation without modification: The rule is needed to clarify the citizenship requirement for certification consistent with recent statutory change. The rule implements the provisions of Education Law section 3001, which establishes exceptions to the citizenship requirement for teaching in the public schools of New York State. As permitted in section 3001 of the Education Law, the rule provides that a candidate who is not a citizen of the United States may qualify if the candidate is a lawful permanent resident of the United States. It also establishes a number of exceptions that would allow non-citizens to obtain time-limited teaching certificates.

The rule will permit candidates whose participation in a teacher preparation program was interrupted by active military service to have additional time to complete requirements under the teacher certification requirements in effect prior to February 2, 2004. This change is needed to accommodate such candidates who were on track for meeting the requirements for certification under the requirements that were in place at the time they were called to service for the country. The Department believes that these candidates should not be penalized for such service.

The rule renews two pathways to certification needed to meet teacher shortages. The first would permit licensed and registered speech-language pathologists to qualify for teaching certificates in speech and language disabilities (all grades) under an exception to the regular requirements. The second would permit certified out-of-state teachers to qualify for a "conditional" first level certificate, allowing holders two years to pass the New York State certification examination. Both pathways expired on February 1, 2004, and reinstatement is needed to meet teacher shortages.

The rule also permits individuals who were employed in a public school or other school requiring certification, as theater teachers for a prescribed period prior to February 2, 2004, to continue to teach without additional certification, provided the teacher holds a permanent certificate in the classroom teaching service. The new teacher certification requirements establish the new certificate title, theater (all grades). This title did not exist before February 2, 2004. The rule is needed as a matter of fairness to permit teachers who have recent employment as theater teachers to continue their employment.

Legal Basis for Rule: Education Law §§ 207, 305(1), (2), and (7), 3001(2), 3004(1) and (7), 3006(1)(b), 3009(1) and 3010.

Assessment of public comment: No public comment received.

Sections 3.47 and 100.10 – Requirements for the Conferral of a College Degree and the Home Instruction of Students of Compulsory Attendance Age and College Study.

Description of Rule: The rule establishes alternatives to the requirement that a candidate for a college degree hold a high school diploma, repeals the requirement that a student must have completed at least a four-year high school course or its equivalent prior to beginning degree study, requires students subject to compulsory education to obtain the approval of an appropriate school administrator prior to enrolling in college credit course work offered when the public school is in session, and establishes requirements relating to the home instruction of students of compulsory attendance age and college study.

Justification for continuation without modification: Currently, Regents Rules require candidates for a college degree to demonstrate that they have completed at least a four-year high school course or its equivalent, prior to obtaining the degree. The rule provides a number of alternative requirements that may be met instead of the holding of a high school diploma. Specifically, under the rule, the candidate for a degree who is beyond compulsory school age will be required to: hold a high school diploma, or have completed the equivalent of a four-year high school course as certified by the superintendent of schools or comparable chief school administrator, or hold a high school equivalency diploma, or have completed 24 semester hours of college course work in designated subjects, or have previously earned and been granted a college degree. The increasing variety of high school preparation, including by distance learning or through home instruction, has suggested that providing additional alternatives to the requirement that a candidate for a college degree hold a high school diploma would be helpful to students and colleges and universities in New York State. The requirements provide needed flexibility in the

regulation, permitting the candidate for a degree to demonstrate preliminary education through a variety of means. The rule does not extend these alternatives to a candidate for a degree who is of compulsory school age. Such a candidate must demonstrate to the college that he or she holds a high school diploma, or has completed a four-year high school course, as certified by the superintendent of schools or comparable chief school administrator. This requirement is necessary because students of compulsory school age must be in high school or home schooled, unless they have already completed high school study, as signified by holding the high school diploma or the certification by the superintendent of schools of completion of the high school course. The rule removes the requirement that a student must complete at least a four-year high school course, or its equivalent, prior to beginning the course of study for a college degree. The Department does not believe this requirement is necessary because section 52.2(d) of the Commissioner's regulations already requires colleges to take into account the capacity of the student to undertake the program of study in their admission requirements for each degree program. In addition, the change is needed to resolve a conflict in the Rules of the Board of Regents and the Regulations of the Commissioner of Education. Section 100.7 of Commissioner's Regulations permits a student to earn a high school equivalent diploma through college study as a recognized candidate for a degree, but the provision proposed for repeal appears to prohibit that study. The rule also requires students who are subject to compulsory education requirements to present the college with written approval from an appropriate school administrator that enrollment in college credit courses is approved, prior to college enrollment. This requirement does not apply when the college credit course is offered in its entirety outside the normal instructional year or hours of session of the public schools of the district of residence. This change provides a necessary link between the college and the school district for students subject to compulsory education. It helps to safeguard that these students are meeting the requirements for compulsory school attendance. Finally, the rule establishes an additional content requirement for individual home instruction plans (IHIPs) for home-schooled students. It requires the IHIP to include a statement regarding whether or not the child will enroll in college-level course work as part of the child's instruction and the subjects to be covered by such course work. This is needed to enable a home-schooled student subject to compulsory education requirements to easily demonstrate to the college that college-level study is authorized by the school district.

Legal Basis for Rule: Education Law §§ 207, 210, 218(1), 224(4), 3204(2), 3205(1), (2) and (3), 3210(2)(d), 3212(2)(d) and 3234(1).

Assessment of public comment: No public comment received.

Sections 80-3.6, 80-4.1, 80-4.3, 83.1, 83.3, 83.5, 87.5 and 87.6 – Title of the Executive Director of the Office of Teaching Initiatives and the Extension in Gifted Education of a Teaching Certificate.

Description of Rule: The rule updates the title of the head of the State Education Department's Office of Teaching Initiatives in various provisions of the Regulations of the Commissioner of Education and defers implementation of the effective date of the requirement for a gifted education extension of a teaching certificate.

Justification for continuation without modification: The rule is needed to conform the Regulations of the Commissioner of Education to changes made in the organization of the Office of Higher Education. Specifically, the former title of Executive Coordinator of the Office of Teaching has been changed to Executive Director of the Office of Teaching Initiatives. The rule updates references to this title in provisions of the Regulations of the Commissioner of Education relating to professional development for teachers holding a professional certificate, teacher moral character proceedings, and proceedings for the denial of clearance for employment or certification based upon a criminal history check. The rule is also needed to delay until September 1, 2005 the requirement that a teacher must hold a gifted education extension of a teaching certificate, or have obtained from the Department a statement of continued eligibility based upon employment in this field, in order to provide education for gifted pupils within a gifted and talented program which is funded pursuant to Education Law and in accordance with Part 142 of the Commissioner's Regulations. At the present time, there are insufficient options available for candidates to

take the course work they need to have completed for this extension. Only eight colleges offer registered programs leading to the extension in gifted education. Currently, the Office of Higher Education is encouraging additional colleges across the State to offer the course work for the extension. The delay in the effective date is needed to permit colleges time to develop and offer the course work and candidates additional opportunities to complete it.

Legal Basis for Rule: Education Law §§ 207, 305(1), (2), and (7), 3001(2), 3004(1), 3004-c, 3006(1)(b), 3009(1), 3010 and 3035(3).

Assessment of public comment: No public comment received.

Sections 80-2.11, 80-5.18 and 80-5.19 – Creation of a supplementary certificate in the classroom teaching service and relocation of the requirements for teachers of adult, community and continuing education.

Description of Rule: The rule establishes a new teaching certificate, the supplementary certificate, to enable a teacher certified in one classroom teaching title, upon meeting prescribed requirements, to provide instruction in a different title in the classroom teaching service for which there is a demonstrated shortage of certified teachers; and to relocate existing requirements for teachers of adult, community and continuing education to another section of Commissioner's regulations.

Justification for continuation without modification: The rule is needed to facilitate the State's ability to address persistent shortages of certified teachers in certain subject matter areas, including but not limited to mathematics, the sciences, bilingual education, and special education, and in certain geographic areas of the State. The rule creates a practical mechanism for certified teachers in areas of oversupply to earn additional certificates in areas of need. The rule prescribes clearly defined standards to ensure the quality of the education and experience of teachers certified by this route. The rule is designed to support the Department's continuing efforts to certify a sufficient number of properly qualified candidates to fill vacant teaching positions in the State's public schools. The supplementary certificate will be valid for three years from its effective date and will not be renewable. This certificate will be limited to employment with an employing entity. The option to obtain the supplementary certificate will expire on September 1, 2009. The rule is also needed to relocate the existing requirements for teachers of adult, community and continuing education to a more appropriate section of the Regulations of the Commissioner of Education. The rule moves these requirements from section 80-2.11 to section 80-5.19 in a Subpart that deals with specialized credentials.

Legal Basis for Rule: Education Law §§ 207, 305(1), (2), and (7), 3001(2), 3004(1), 3006(1)(b), 3009(1) and 3010.

Assessment of public comment: No public comment received.

#### OFFICE OF THE PROFESSIONS

##### Section 64.7 of the Commissioner's Regulations - Nursing

Description of Rule: This rule establishes requirements governing the execution by registered professional nurses of non-patient specific orders of licensed physicians or certified nurse practitioners to administer purified protein derivative (PPD) mantoux tuberculin skin tests

Justification for continuation without modification: The rule is necessary to implement statutory requirements. Since 2004, some of the sections have been amended and some sections have been added to implement statutory amendments and for review of policy reasons.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504 (not subdivided), 6506(1), 6507(2)(a), 6527(6)(c), 6909(4)(d) and (5).

Assessment of public comment: No public comment received.

##### Section 73.5 of the Commissioner's Regulations - Chiropractic

Description of Rule: The rule establishes continuing education requirements and standards that licensed chiropractors must meet to be registered to practice in New York State and requirements for the approval of sponsors of such continuing education.

Justification for continuation without modification: The rule is necessary to implement statutory requirements.

Legal Basis for the Rule: Education Law sections 207(not subdivided), 212 (3), 6502(1), 6504(not subdivided), 6507(2)(a), 6508(1), and 6554-a.

Assessment of public comment: No public comment received.

Sections 52.30, 74.1, 74.2, 74.3, 74.4, 74.5, 74.6, 74.7, and 74.8 of the Commissioner's Regulations – Social Work

Description of Rule: The rule sets forth requirements for licensure in the profession of social work, requirements for an authorization qualifying licensed clinical social workers for insurance reimbursement, and requirements relating to the supervision of licensed master social workers who provide licensed clinical social work services and for baccalaureate social workers who provide licensed master social work services.

Justification for continuation without modification: The rule is necessary to implement statutory requirements. Some of the sections have been amended multiple times since the 2004 amendment to make necessary adjustments.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210(not subdivided), 6501(not subdivided), 6507(2)(a) and (3)(a), 7701(1)(d), 7704(1)(b) and (d) and (2)(b), (c), and (d), 7705(1), 7706(2) and (3), and 7707(4).

Assessment of public comment: No public comment received.

Sections 65.6 and 65.7 of the Commissioner's Regulations - Podiatry

Description of Rule: The rule implements section 7006(4) of the Education Law by establishing the requirements pursuant to which an unlicensed assistant providing supportive services to a licensed podiatrist may x-ray a patient's foot, while under the direct supervision of the licensed podiatrist, provided that the unlicensed assistant has completed an acceptable course of study, the content of which is set forth in the rule.

Justification for continuation without modification: The rule is necessary to implement statutory requirements.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), and 7006(4).

Assessment of public comment: No public comment received.

##### Section 61.18 of the Commissioner's Regulations - Dentistry

Description of Rule: The rule adjusts the requirements for the residency option pathway for dental licensure by deleting an unnecessary provision that required the dental residency program to be completed within a time frame of two years prior to application for licensure.

Justification for continuation without modification: The rule is needed as it has been determined that the originally imposed two year time frame is unnecessary, as the regulation contains other requirements that adequately verify that the applicant has completed the residency program and other licensed professions do not have similar time frames for completing residency programs. Since 2004, this section has been amended to make necessary changes.

Legal Basis for Rule: Education Law sections 207 (not subdivided), 6506(1), 6507(2)(a) and (3)(a), and 6604(3).

Assessment of public comment: No public comment received.

#### OFFICE OF CULTURAL EDUCATION

Sections 185.5 and 185.12 - Local Government Records Management.

Description of Rule: The rule revises Records Retention and Disposition Schedule ED-1 to make needed changes and additions to minimum retention periods for records of school districts, boards of cooperative educational services, county vocational education and extension boards, and teacher resource and computer training centers.

Justification for continuation without modification: Section 57.25(2) of Arts and Cultural Affairs Law requires the commissioner of education to develop, adopt by regulation, issue and distribute to local governments records retention and disposition schedules establishing minimum legal retention periods. The issuance of such schedules constitutes formal consent by the commissioner to the disposition of records that have been maintained in excess of the retention periods set

forth in the schedules. The 2004 revisions to the rule make necessary changes and additions to ensure that concerned local governments have up-to-date standards for records retention and disposition.

Legal Basis for Rule: Education Law section 207 (not subdivided) and Arts and Cultural Affairs Law section 57.25(2).

Assessment of public comment: No public comment received.

#### OFFICE OF MANAGEMENT SERVICES

Sections 187.1, 187.2 and 187.3 – Inspection and Copying of Department Records.

Description of Rule: The rule conforms the Commissioner's Regulations regarding Freedom of Information Law (FOIL) procedures to a Court decision interpreting Public Officers Law section 89(3); and to update the address of the Department's records access officer and the addresses of several regional offices designated to receive requests for inspection and copies of Department records.

Justification for continuation without modification: The rule is needed to conform the Commissioner's Regulations to Public Officers Law section 89(3) and the regulations promulgated by the Committee on Open Government, consistent with the holding in *Lecker v. New York City Board of Education*, 157 AD2d 486 (1st Dept). In that decision, the Court upheld a determination by the Supreme Court, New York County, that denied petitioner's application for an order directing the New York City Board of Education to amend its regulations relating to FOIL to require the Board of Education to either grant or deny access to its records within 10 days after acknowledgment of receipt of the request for records. While noting that this requirement was contained in the regulations promulgated by the Committee on Open Government (21 NYCRR 1401.5[d]), the Court determined that such regulation was invalid as inconsistent with Public Officers Law section 89(3), which contains no such time limitation but merely requires that the person requesting a record be furnished with a statement of the "approximate date when such request will be granted or denied." The Committee on Open Government subsequently amended section 1401.5 to remove the 10-day requirement. The amendment to section 187.4 of the Commissioner's Regulations removes identical language imposing such 10-day requirement.

In addition, the amendments to sections 187.1 and 187.2 are necessary to update references to the address of the Department's records access officer and the addresses of several regional offices designated to receive requests for inspection and copies of Department records.

Legal Basis for Rule: Education Law sections 207, 305(6) and Public Officers Law sections 87(1)(b) and 89(3).

Assessment of public comment: No public comment received.

#### Part 221 – Education Department Staff

Description of Rule: The rule deletes obsolete provisions relating to leaves of absence for State Education Department employees.

Justification for continuation without modification: The rule is needed to delete obsolete provisions that have been superseded by provisions in the Civil Service Law, federal law or collective bargaining agreements.

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (6).

Assessment of public comment: No public comment received.

#### OFFICE OF STATE REVIEW

Sections 200.5, 200.6 & 200.7 – Judicial Review of the Determination of the State Review Officer

Description of Rule: The rule aligns State regulations with section 4403(3) of the Education Law, as amended by Chapter 492 of the Laws of 2003, to ensure that a judicial appeal of a decision of the State review officer is by means of a proceeding in State Supreme Court pursuant to Article 4 of the Civil Practice Law and Rules. The rule was amended in 2007 to re-letter section 200.5(j) to section 200.5(k), and section 200.6(i) to section 200.6(j).

Justification for continuation without modification: The rule is necessary to align the Commissioner's Regulations with Education Law section 4404(3), as amended by Chapter 492 of the Laws of 2003. Chapter 492 amended section 4404(3) to provide that judicial review of the final determination or order of a State Review Officer be

conducted in a proceeding pursuant to Article 4 of the Civil Practice Law and Rules (CPLR) rather than pursuant to Article 78 of the CPLR. Judicial review under CPLR Article 4 ensures the State's compliance with the federal Individuals with Disabilities Education Act (IDEA) and its implementing regulations, which require that a review of the final determination or order be made on the entire record, with any additional evidence heard at the request of the party, and be based upon a preponderance of the evidence.

Legal Basis for Rule: Education Law sections 101, 207, 4403(3) and 4404(3), and Chapter 492 of the Laws of 2003.

Assessment of public comment: No public comment received.

Part 279.12 – State-Level Review of Impartial Hearing Officer Determinations

Description of Rule: The rule conforms the Regulations to the Federal Individuals with Disabilities Education Act (IDEA) and 34 CFR section 300.511, by deleting a provision authorizing the State Review Officer to extend the timelines for issuing a decision to allow additional time to review an extensive record on appeal.

Justification for continuation without modification: The U.S. Department of Education has notified the State Education Department that this provision is out of compliance with CFR section 300.511.

Legal Basis for Rule: Education Law sections 101, 207, 311, 4403(1) and (3), 4404(2) and 4410(13).

Assessment of public comment: No public comment received.

#### D. CALENDAR YEAR 1999

#### OFFICE OF P-12 EDUCATION

#### Section 100.2(m) - Local Assistance Plans

Description of Rule: Section 100.2(m) of the Commissioner's Regulations specifies the requirements for public school reporting, including dissemination of public school report cards to the public and parents. The regulation also requires that school districts develop Local Assistance Plans for those schools that perform below benchmarks established by the Commissioner on selected State assessments.

Justification for continuation without modification: The regulation is intended to satisfy the public school reporting requirements of the No Child Left Behind (NCLB) Act, 20 USC section 6311(h)(2), and achieve the Regents goal that all educational institutions will meet Regents high performance standards. The regulations were last amended in August 2003 to bring them into alignment with the requirements of NCLB.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (19) and 309(not subdivided).

Assessment of public comment: No public comment received.

#### Section 100.2(p) - Schools Under Registration Review

Description of Rule: Section 100.2(p) of the Commissioner's Regulations specifies the State's system for registration of public schools and school/district accountability. The regulations delineate the process for registration and revocation of registration of public schools, the criteria used to hold schools and districts accountable for student performance, the actions to be taken when schools or districts fail to meet standards and the process for recognizing high performing or rapidly improving schools and districts.

Justification for continuation without modification: The regulation is necessary to meet the requirements of the No Child Left Behind (NCLB) Act, 20 USC section 6316, relating to school and district accountability and achieve the Regents goal that all educational institutions will meet Regents high performance standards. The regulations were last amended in August 2003 to bring them into alignment with the requirements of NCLB.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 215(not subdivided) and 305(1) and (2).

Assessment of public comment: No public comment received.

#### Part 119.2, 119.6, 119.7 Charter schools

Description of Rule: The rule describes the manner in which charter schools may provide retirement benefits for their employees, the manner in which they enact policies against harassment, bullying and discrimination, and the requirements for the renewal of charters.

Justification for continuation without modification: The rules are necessary to implement statutory requirements by establishing standards for participation in public employee retirement systems by those charter schools electing to do so. The rule also provides standards for retirement benefits of charter school employees, and provide specific guidance to charter school related to the implementation of the dignity for all students act.

Legal Basis for Rule: Education Law section 207(not subdivided), 2854(c) and 2856(1) and (2), and Chapter 4 of the Laws of 1998.

Assessment of public comment: No public comment received.

Sections 155.1-155.21 - Comprehensive Public School Safety Program

Description of Rule: Sections 155.1-155.21 specify requirements for school districts to properly maintain, manage and improve public school facilities in order to provide sound educational environments for New York State's students, including the preparation of a five-year capital facilities plan that is updated annually; structural safety inspections; annual visual inspections; compliance with the Uniform Safety Standards for School Construction and Maintenance Projects and the Uniform Code of Public School Building Inspections, Safety Rating and Monitoring, and Comprehensive Public School Safety Program.

Justification for continuation without modification: The regulations are necessary to comply with Chapters 56 and 58 of the Laws of 1998.

Legal Basis for Rule: Education Law sections 207(not subdivided), 409-d(1) and (2), 409-e(1) through (4), 3602(3)(b) and 3641(4) and section 1 of Part B of Chapter 56 and sections 13 and 48 of Chapter 58 of the Laws of 1998.

Assessment of public comment: No public comment received.

Sections 100.1-100.9 - State Learning Standards and Assessments and Graduation and Diploma Requirements

Description of Rule: Sections 100.1-100.9 specify the State learning standards, the program and unit of study requirements and the assessment requirements for students at the elementary, middle and high school levels, including the requirements for high school graduation and earning a diploma.

Justification for continuation without modification: These regulations implement policy adopted by the Board of Regents.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 212(3), 215(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided), 911(not subdivided), 3204(2-a) and 4403(3).

Assessment of public comment: No public comment received

Sections 154.2 through 154.5 - Limited English Proficiency

Description of Rule: Sections 154.2-154.5 specify the plan and program requirements for districts claiming State aid for the operation of programs for pupils with limited English proficiency.

Justification for continuation without modification: The rule requires school districts that are claiming State aid for the instruction of students with limited English proficiency (LEP) to increase the amount of time for English language instruction to strengthen and improve bilingual education and freestanding English as a second language programs to help LEP students meet Regents standards and pass the new State Assessments. The regulations were amended in April 2003 to conform to the accountability provisions of the federal No Child Left Behind Act and to establish criteria for the identification and assessment of students with limited English proficiency through the use of the Language Assessment Battery-Revised test and the New York State English as a Second Language test.

Legal Basis for Rule: Education Law sections 207(not subdivided), 215(not subdivided), 3204(2), (2-a), (3) and (6), and 3602(10) and (22).

Assessment of public comment: No public comment received.

Section 200.1 Definitions

Description of Rule: The rule amended or added the following definitions relating to special education: adapted physical education, assistive technology device, assistive technology service, change in placement, child's teacher, consent, consultant teacher, days, func-

tional behavioral assessment, general curriculum, individualized education program, mediator, native language, parent, parent counseling and training, preschool student with a disability, prior notice, regular education teacher, related services, school health services, special class, specially designed instruction, special education, special education provider, special education teacher, student with a disability and travel training. (Consistent with Federal Law and regulations, the definitions of assistive technology, guardian ad litem, and mediator were revised in 2005; the definition of class size was revised in 2004; the definition of functional behavioral assessment was revised in 2006; the definition of impartial hearing officer in section 200.1(x) was revised in 2001, 2005 and 2014; the term "paraprofessional" was replaced with "supplementary school personnel" in 2004; the definitions of parent and related services were revised in 2005 and 2007; the term prior notice was changed to prior written notice in 2005; the definition of school health services was revised in 2005, 2007 and 2008 and the term was changed to "school health services and school nurse services" in 2008; and the definition of student with a disability was revised in 2005 and 2011.)

Justification for continuation without modification: The rule is needed in order to ensure compliance with federal regulations 34 CFR sections 300.5, 300.6, 300.7, 300.8, 300.9, 300.16, 300.19, 300.20, 300.24, 300.26, 300.15 and 300.571.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1) - (11), 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.2 Board of Education Child Find Responsibilities

Description of Rule: The rule amended the requirements relating to procedures to locate, identify and evaluate all nonpublic private school students with disabilities. (The rule was amended in 2005 and 2007 to ensure compliance with Federal Law and regulations.)

Justification for continuation without modification: The rule is needed in order to ensure compliance with 34 CFR section 300.454.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1) - (11), 4403(3) and 4410(13).

Assessment of public comment: No public comment was received.

Section 200.2(b) Written Policies of the Board of Education

Description of Rule: The rule added a requirement that the board of education adopt policies to ensure that students with disabilities be involved in and progress in the general education classes; establish a plan and policies for implementing schoolwide approaches and preferential interventions prior to a referral for special education; and establish plans and policies for the appropriate declassification of students with disabilities. (The rule was amended in 2007 to add that a school-wide approach to a remediate a student's performance prior to referral for special education may include a response to intervention process and in 2019 to repeal the requirement that boards of education develop plans and policies for appropriate declassification of students with disabilities.)

Justification for continuation without modification: The rule is needed to align State regulations to State law which requires that schools provide preferential supports and services to ensure appropriate referrals of students who need special education.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1) - (11), 4403(3), 4410(13) and 4402(b)(3) as amended by Chapter 405 of the Laws of 1999.

Assessment of public comment: No public comment received.

Section 200.2(c) District Plans

Description of Rule: The rule repealed the requirement for district plans for the period September 1, 1996 to September 1, 1998.

Justification for continuation without modification: The rule was no longer applicable as those dates had passed.

Legal Basis for Rule: Education Law sections 207(not subdivided), 3602, 4401(1) - (11), 4403(3), 4410(13).

Assessment of public comment: No public comment received.

Section 200.2(h) Local Comprehensive System of Personnel Development (CSPD) Plan

Description of Rule: The rule adds the requirement for each board

of education to annually submit to the State Education Department a plan that demonstrates that all personnel providing services to students with disabilities are adequately trained. (The rule was amended in 2005 to repeal requirements for CSPD plans and to require that schools include professional development activities for professional staff and supplementary school personnel staff working with students with disabilities in the professional development plan pursuant to section 100.2 of the Commissioner's Regulations.)

Justification for continuation without modification: The rule is needed to ensure compliance with 34 CFR section 300.135, which requires that the State have in effect a comprehensive system of personnel development.

Legal Basis for Rule: 34 CFR section 300.135 and Education Law sections 207(not subdivided), 4401(1) - (11), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

#### Section 200.3 Committees on Special Education

Description of Rule: The rule amends the required membership of the Committee on Special Education (CSE), Committee on Preschool Special Education (CPSE) and the Subcommittee on Special Education to add members required by federal law and to provide that a parent of a student may decline the participation of the additional parent member. (The rule was amended in 2005, 2007, 2008, 2013 to conform section 200.3 with Federal Law and regulations and State Law relating to membership of the CSE, CPSE and Subcommittees.)

Justification for continuation without modification: The rule is necessary to conform to federal regulations and State law relating to membership of the CSE, CPSE and Subcommittees.

Legal Basis for Rule: 34 CFR section 300.344 and Education Law sections 207(not subdivided), 4401(1)-(11), 4402(1)(b), 4403(3) and 4410(3).

Assessment of public comment: No public comment received.

#### Section 200.4(a) Referrals for Special Education Services

Description of Rule: The rule was amended relating to the withdrawal of a referral for special education to add that the building administrator and the parent could meet to determine if additional general education support services, including academic intervention services, could be provided to the student as an alternative to special education.

Justification for continuation without modification: The rule is necessary to align State regulations with Education Law section 4402 as amended by Chapter 405 of the Laws of 1999.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1)-(11), 4401-a as amended by Chapter 405 of the Laws of 1999, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

#### Section 200.4(b) Individual Evaluation

Description of Rule: The rule was amended to add that the individual evaluation include a variety of assessment tools and strategies, including information provided by the parent, to gather relevant functional and developmental information about the student and information related to enabling the student to participate and progress in the general education curriculum; and to add that the evaluation must include a functional behavioral assessment for a student whose behavior impedes his or her learning or that of others. (The rule was amended in 2005 and 2007 to conform section 200.4(b) with Federal Law and regulations relating to individual evaluations.)

Justification for continuation without modification: The rule is needed to conform State regulations to federal regulations relating to the required components of evaluations.

Legal Basis for Rule: 34 CFR section 300.532 and Education Law sections 207(not subdivided), 4401(1)-(11), 4403(3) and 4410(13).

Assessment of public comment: No public comment was received.

#### Section 200.4(b)(4) and (5) Initial and Reevaluations

Description of Rule: The rule amended the requirements relating to the determination of needed evaluation data for initial and reevaluations of students with disabilities. (The rule was amended in 2005 and

2008 to align sections 200.4(b)(4) and (5) with Federal Law and regulations relating to initial evaluations and reevaluations.)

Justification for continuation without modification: The rule is needed to align State regulations to federal regulations in 34 CFR section 300.533.

Legal Basis for Rule: 34 CFR section 300.533 and Education Law sections 201(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

#### Section 200.4(b)(6) Evaluation Procedures

Description of Rule: The rule was amended to add that evaluations be administered by individuals who are knowledgeable about the test or procedures; that assessments not conducted under standard conditions must include a description of how the administration varied from standard administration; that no single procedure be used to determine a student's eligibility for special education; that evaluations must be comprehensive and use technically sound instruments; that assessment tools and strategies are used that provide relevant information to determine a student's educational needs; that a copy of the evaluation report be provided to the student's parent; that the procedures for evaluating students suspected of having a learning disability must be consistent with federal regulations; and that the procedures for conducting expedited evaluations must meet the requirements of section 201.6 of the Regulations of the Commissioner. (The rule was amended in 2005 and 2007 to conform section 200.4(b)(6) with Federal Law and regulations.)

Justification for continuation without modification: The rule is necessary to conform to federal regulations in 34 CFR sections 300.532, 300.534 and 300.535.

Legal Basis for Rule: 34 CFR sections 300.532, 300.534 and 300.535 and Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13) of the Education Law.

Assessment of public comment: No public comment received.

#### Section 200.4(c) Eligibility Determinations

Description of Rule: The rule adds requirements relating to eligibility determinations for a student with a disability that the parent must be given a copy of the evaluation report and the documentation of eligibility; that a student may not be determined eligible for special education if the determinant factor is lack of instruction in reading or math or limited English proficiency; that a school must evaluate a student prior to declassification (which does not include prior to graduation or aging out).

Justification for continuation without modification: The rule is necessary to conform State regulations with federal regulations in 34 CFR section 300.534. (The rule was amended in 2005 and 2007 to conform section 200.4(c) with Federal Law and regulations.)

Legal Basis for Rule: 34 CFR section 300.534 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

#### Section 200.4(d) IEP Recommendations

Description of Rule: The rule adds that, in developing the IEP, the Committee must consider the results of the initial or most recent evaluation, the student's strengths, the concerns of the parents, the student's results on State or districtwide assessments and other special considerations. The rule also adds that the IEP must include program modifications or supports for school personnel; testing accommodations a student needs in the administration of district-wide assessments and, consistent with Department policy, State assessments; and a statement of a particular device or service a student needs to receive a free appropriate public education.

Justification for continuation without modification: The rule is necessary to conform State regulations to federal regulations in 34 CFR section 300.346. (The rule was amended in 2005 to conform State Regulations with Federal Law and to re-letter and re-number the provisions in sections 200.4(d)(2) and (3).)

Legal Basis for Rule: 34 CFR 300.346 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

## Section 200.4(d)(4) IEP Development

Description of Rule: The rule added a requirement that a school district use other methods to ensure participation by the private school or facility, such as individual or conference telephone calls, to ensure private school participation in an IEP meeting; and repeals the requirement that the Committee ensure the participation of a person knowledgeable about the individual evaluation conducted and the evaluation results for a student with a disability who has been evaluated for the first time.

Justification for continuation without modification: The rule regarding participation by private school representatives is necessary to conform to federal regulations in 34 CFR section 300.349. The rule regarding participation of a person knowledgeable about the evaluation is necessary to align State regulations to federal regulations in 34 CFR section 300.344, which requires each Committee meeting to include an individual who can interpret the instructional implications of evaluation results.

Legal Basis for Rule: 34 CFR sections 300.344 and 300.349 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

## Section 200.4(d)(4)(c) Least Restrictive Environment

Description of Rule: The rule added that, in selecting the least restrictive environment, consideration must be given to any potential harmful effect on the student or on the quality of services that he or she needs; and that a student with a disability may not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

Justification for continuation without modification: The rule is necessary to align State regulations to federal regulations in 34 CFR section 300.552.

Legal Basis for Rule: 34 CFR section 300.552 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

## Section 200.4(e) IEP Implementation

Description of Rule: The rule was amended to add that there may be no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education to the student is being determined; and that teachers and other providers must have access to a copy of the student's IEP. (This later rule was amended in 2003 consistent with Chapter 408 of the Laws of 2003 and in 2013 consistent with Chapter 279 of the Laws of 2012.)

Justification for continuation without modification: The rule is necessary to ensure IEP implementation in a timely manner consistent with the requirements in 34 CFR sections 300.301 and 300.342.

Legal Basis for Rule: 34 CFR sections 300.301 and 300.342 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

## Section 200.4(e) Annual Review and Reevaluations

Description of Rule: The rule was amended to require that a student's placement in the least restrictive environment be a consideration in the annual review and that the results of any reevaluation must be addressed by the CSE or CPSE in a meeting. (The rule was amended in 2005 to conform State regulations with Federal Law.)

Justification for continuation without modification: The rule is necessary to align State regulations with federal regulations in 34 CFR sections 300.346, 300.535, 300.536 and 300.552.

Legal Basis for Rule: 34 CFR sections 300.346, 300.535, 300.536 and 300.552 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.4(g) IEP for a Student Placed in a Child Care Institution by Other Agency

Description of Rule: This rule amended the requirements for IEP information developed by the school district where the student last attended. (The rule was amended in 2005 to re-letter section 200.4(g) to section 200.4(h) and in 2009 to correct a cross citation.)

Justification for continuation without modification: This rule is necessary to be consistent with amended section 200.4(d) of the Regulations of the Commissioner of Education.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

## Section 200.5 Due Process Procedures

Description of Rule: This rule repealed section 200.5 and replaced it with a new section 200.5 relating to prior notice, consent, notice of meetings, parent participation in CSE meetings, confidentiality of personally identifiable data, procedural safeguards notice, independent educational evaluations, mediation, impartial hearings, appeal to a State review officer of the State Education Department, State complaint procedures and surrogate parents. (The rule was amended in 2002, 2003, 2004, 2005, 2007, 2008, 2009, 2010, 2012 and 2013 consistent with Federal Law and regulations and State Law relating to due process procedures.)

Justification for continuation without modification: The rule is necessary to align State regulations with federal law and regulations.

Legal Basis for Rule: 34 CFR sections 300.500 through 300.515 and Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3), 4404, 4404-a and 4410(13).

Assessment of public comment: No public comment received.

## Section 200.6(a) Continuum of Services

Description of Rule: The rule was amended to add that special education services could be provided in a general education class. (The rule was amended in 2007 to conform with Federal Law and regulations.)

Justification for continuation without modification: The rule was necessary to clarify that special education includes services that could be provided in a student's general education classes to ensure a student's placement in the least restrictive environment.

Legal Basis for Rule: 34 CFR sections 300.550 through 300.552 and Education Law sections 207(not subdivided), 4401(1) - (11), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

## Section 200.6(d) Consultant Teacher Services

Description of Rule: The rule was amended to repeal the requirement that a student with a disability be enrolled full-time in general education classes in order to be provided consultant teacher services and to make a technical change to replace the term "occupational education" with "career and technical education."

Justification for continuation without modification: The rule was necessary to ensure students with disabilities are able to receive consultant teacher services, as appropriate, in combination with other special education services such as resource room and related services.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

## Section 200.6(e) Related Services

Description of Rule: The rule was amended to add that the location of the related services must be documented on the IEP.

Justification for continuation without modification: The rule is necessary to align State regulations with federal regulations at 34 CFR section 300.347.

Legal Basis for Rule: 34 CFR section 300.347 and Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

## Section 200.6(g) Special Classes

Description of Rule: The rule was amended to add that a variance from the special class sizes for middle and secondary students can be implemented to the extent authorized by law, repealing references to the school years 1995-96 and 1996-97. The rule also added that a special class with 15 students in New York City could only be increased by one additional student through this variance process. (The rule was amended in 2007 to re-letter section 200.6(g) to section 200.6(h).)

Justification for continuation without modification: The rule was necessary since the variance is applicable only to the extent that the Legislature extends the sunset provision and to comply with changes to State law. Therefore, any reference to a particular year required an annual amendment to State regulations.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4402(2)(d) and (6), 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.6(h) Home and Hospital Instruction

Description of Rule: The rule adds that a student with a disability on home and/or hospital instruction must receive instruction and related services as recommended on the IEP and that a student shall only be recommended for home and/or hospital instruction if that is the least restrictive environment for the student. (The rule was amended in 2007 to re-letter section 200.6(h) to section 200.6(i).)

Justification for continuation without modification: The rule is necessary to ensure that the CSE considers the least restrictive environment and the unique needs of a student with a disability when making a home or hospital instruction recommendation.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.7 Approval of Private Schools for Students with Disabilities

Description of Rule: The rule was amended to add that the school conduct and discipline procedures in an approved school, a State-operated school and a State-supported school must be consistent with section 100.2(l) and Part 201 of the Commissioner's Regulations. (The rule was amended in 2002, 2007 and 2013 consistent with Federal Law and regulations and State Law.)

Justification for continuation without modification: The rule is necessary to conform to federal regulations 34 CFR sections 300.401 and 300.519 through 300.529.

Legal Basis for Rule: 34 CFR sections 300.401 and 300.519 through 300.529 and Education Law sections 207(not subdivided), 3214(3)(c), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.7 State-Operated Schools

Description of Rule: The rule is amended to conform the required members of the multidisciplinary team of a State-operated school to the required members in federal regulations 34 CFR section 300.344 and to add that a parent of a child in a State-operated school may request mediation to resolve a dispute.

Justification for continuation without modification: The rule is necessary to ensure compliance with federal regulations 34 CFR sections 300.344 and 300.506.

Legal Basis for Rule: 34 CFR sections 300.344 and 300.506 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.8 State Assistance for Instruction of Students with Disabilities

Description of Rule: The rule was amended to make technical corrections to cross citations; to clarify the term "days" consistent with the amended definition in section 200.1 of the Commissioner's Regulations; and to replace the term "triennial evaluation" with the term "reevaluation."

Justification for continuation without modification: The rule is necessary to make technical corrections as a result of amendments to other sections of the regulations.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.16(c) Individual Evaluation - Preschool Students with Disabilities

Description of Rule: The rule was amended to make technical corrections to cross citations and certain terms; to add that the summary

report of the evaluation not include a recommendation as to location of services; to repeal the requirement that the parent must request the approved evaluator to provide the parent with a copy of the evaluation summary and to ensure that for purposes of eligibility and continuing eligibility determinations, the CPSE must provide a copy of the evaluation report and the documentation of eligibility to the parent. (The later rule was amended in 2005 and re-lettered section 200.16(c)(6) to section 200.16(d)(2).)

Justification for continuation without modification: The rule is necessary to conform State regulations to 34 CFR section 300.534.

Legal Basis for Rule: 34 CFR section 300.534 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.16(d) Recommendation – Preschool Student with a Disability

Description of Rule: The rule was amended to make technical corrections to cross citations and certain terms and to add that the board of education must notify the parent if it sends the recommendation back to the CPSE. (The rule was amended in 2005 and section 200.16(d) was re-lettered as section 200.16(e).)

Justification for continuation without modification: The rule is necessary to correct cross citations and ensure State regulations conform to State law.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.16(e) Annual Review – Preschool Student with a Disability

Description of Rule: The rule was amended to correct certain cross citations and terms. (The rule was amended in 2005 to re-letter section 200.16(e) to section 200.16(f).)

Justification for continuation without modification: The rule is necessary to align cross citations with amended sections in the Regulations.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.16(g) Procedural Due Process – Preschool Student with a Disability

Description of Rule: The rule was amended to require that a procedural safeguards notice be provided to a parent upon initial referral, each notification of an IEP meeting, upon reevaluation of the child and upon receipt of a request for an impartial hearing; and to require that the notice upon initial referral must request consent to the proposed evaluation and advise the parent of the right to consent or withhold consent to the evaluation and initial provision of services to a student not previously identified, and indicate that if the parent does not provide such consent, no further action will be taken by the CPSE until consent is obtained. (The rule was amended in 2005 to reletter section 200.16(g) to section 200.16(h); replace the requirements relating to when the procedural safeguards notice must be provided to the parents with a cross citation to section 200.5(f); and correct a cross citation.)

Justification for continuation without modification: The rule is necessary to clarify procedural safeguards and notice requirements as they relate to preschool students with disabilities.

Legal Basis for Rule: 34 CFR sections 300.500 through 300.505 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.16(g)(3) Notice of Meetings – Preschool Student with a Disability

Description of Rule: The rule was amended to require that a notice of a CSE meeting be provided consistent with section 200.5 of the Commissioner's Regulations. (The rule was amended in 2005 to re-letter section 200.16(g)(3) to section 200.16(h)(3).)

Justification for continuation without modification: The rule is nec-

essary to ensure the meeting notice is provided in accordance with section 200.4(c) of the Commissioner's Regulations.

Legal Basis for Rule: 34 CFR section 300.345 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.16(g)(7) Mediation – Preschool Student with a Disability

Description of Rule: The rule is amended to add that the board of education must ensure that mediation sessions are available to the parent of a preschool child. (The rule was amended in 2005 to re-letter section 200.16(g)(8) to section 200.16(h)(8).)

Justification for continuation without modification: The rule is necessary to ensure compliance with 34 CFR section 300.506 and section 4404-a of the Education Law.

Legal Basis for Rule: 34 CFR section 300.506 and Education Law section 207(not subdivided), 4403(3) and 4404-a of the Education Law.

Assessment of public comment: No public comment received.

Section 200.16(g)(10) State Complaints – Preschool Student with a Disability

Description of Rule: The rule was amended to add to the procedural safeguards for preschool students that State complaint investigations shall be conducted in accordance with section 200.5(m) of the Commissioner's Regulations. (The rule was amended in 2005 to re-letter section 200.16(g)(10) to section 200.16(h)(11) and to change the cross citation from section 200.5(k) to section 200.5(l).)

Justification for continuation without modification: The rule is necessary to ensure compliance with federal regulations in 34 CFR sections 300.660 through 300.662.

Legal Basis for Rule: 34 CFR sections 300.660 through 300.662 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.16(h) Continuum of Services – Preschool Student with a Disability

Description of Rule: The rule was amended to correct certain cross citations and terms. (The rule was amended in 2005 to re-letter section 200.16(h) to section 200.16(i).)

Justification for continuation without modification: The rule is necessary to align this section with other amended sections of the Commissioner's Regulations.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Section 200.20 Approval, Operation and Administration of Preschool Programs

Description of Rule: The rule was amended to correct certain cross citations and the name of the State's special education office. (The rule was amended in 2010 to replace the name of the State's special education office with the State Education Department.)

Justification for continuation without modification: The rule is necessary to align this section with other amended sections of Part 200 of the Commissioner's Regulations.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1)-(11), 4202, 4403(3) and 4410(13).

Assessment of public comment: No public comment received.

Part 201 – Procedural Safeguards for Students with Disabilities Subject to Discipline

Description of Rule: The rule was added to define terms relating to disciplinary actions of students with disabilities; to establish the requirements for CSEs to conduct functional behavioral assessments and develop and implement behavioral intervention plans for students with disabilities; to establish the requirements for CSEs to conduct manifestation determinations; to establish the protections for students presumed to have a disability for discipline purposes; to establish general procedures for suspensions and removals of students with disabilities, including parental notice, five school day suspensions or

removals, 10 school day suspensions or removals, exceptions for patterns of suspensions or removals, and change in placement to an interim alternative educational setting (IAES) for behavior involving weapons, illegal drugs or controlled substances; authority of impartial hearing officers to order a change in placement to an IAES in a dangerous situation; coordination with superintendent's hearing and other due process procedures applicable to all students; provision of services during suspensions; and expedited due process hearings. The rule was amended in 2002, 2005, 2006, 2007, 2008 and 2010 to align State regulations with Federal Law and regulations and State Law relating to the discipline of a student with a disability.)

Justification for continuation without modification: The rule is necessary to align State regulations with federal regulations and State law relating to the discipline of a student with a disability.

Legal Basis for Rule: 34 CFR sections 300.121 and 300.519 through 300.529 and Education Law sections 207(not subdivided), 4403(3) and 3214(3)(c).

Assessment of public comment: No public comment received.

#### OFFICE OF HIGHER EDUCATION

Amendment of Section 145-2.1 of the Regulations of the Commissioner of Education Relating to TAP for Part-Time Students with Disabilities

Description of Rule: Section 145-2.1(a)(4) defines part-time study for State student financial aid purposes (TAP, etc.) for students with disabilities, as defined in the federal Americans with Disabilities Act (42 USC 12102(2)), as enrollment for at least 3 but less than 12 semester hours per semester or the equivalent, or at least 2 but less than 8 semester hours per quarter. The Regents approved the amendment at their July 1999 meeting, to be effective September 1, 1999.

Justification for continuation without modification: Chapter 332 of the Laws of 1998 amended subdivision (4) of section 661 of the Education Law to eliminate the full-time attendance requirement for students with disabilities. The law did not specify the minimum course load that students with disabilities must carry. Section 145-2.1(a) defines part-time study as enrollment for at least six semester hours in a semester. However, the sponsors of Chapter 332 advised the State Education Department that the intent was for students with disabilities to be eligible for TAP providing they enroll for at least three semester hours, necessitating the amendment to the regulation. Based on guidance from Office of Counsel, it was also necessary to include the reference to the federal statute contained in Education Law and specify that, to be eligible, students must be determined to be disabled in accordance with the Americans with Disabilities Act.

Legal Basis for Rule: Education Law sections 207(not subdivided) and 661(4)(d).

Assessment of public comment: No public comment received.

Section 52.21(b) of the Regulations of the Commissioner of Education - Registration of Programs for Preparing Classroom Teachers

Description of Rule: The addition of Section 52.21(b) provided specific standards for all teacher education programs registered in New York State leading to teacher certification. This regulation implemented the intent of the Regents 1998 policy paper "Teaching to Higher Standards: New York's Commitment." The following is a summary of the major requirements of this rule:

- A general education core in liberal arts and sciences is required for all classroom teachers.
- Preparation for teaching students to meet Regents learning standards is required for all classroom teachers.
- Preparation for teaching students with disabilities and students with limited English proficiency is required of all classroom teachers.
- Academic content preparation is also required for special education, literacy and ESL teachers.
- Ten days of diverse field experience is required prior to 40 school days of student teaching for all classroom teachers.
- All teacher education programs leading to certification in social studies shall include study of economics and government and at least 21 credit hours of history and geography to prepare teachers to teach to the new learning standards.

- Thirty-credit major in content area required for secondary teachers and teachers of special subjects.
- All programs for classroom teachers must be accredited.
- Eighty percent of all program completers of teacher education programs must pass the New York State Teacher Certification Examinations or the program may be subject to de-registration.

Justification for continuation without modification: In 1998, the Regents enacted "Teaching to Higher Standards: New York's Commitment." This policy statement provided the framework for sweeping changes to pre-service and in-service teacher education. In enacting these policy changes, the Regents were acknowledging the vital role played by the classroom teacher in improving student learning and achievement. The Regents believed there was a need to create a stronger linkage between the teacher preparation programs and the Regents learning standards for all students. In addition, it was important that all teachers be prepared to teach all students, especially students with disabilities and English language learners. As the State moved to establish rigorous learning standards for all students and increase graduation requirements, the Regents believed that such sweeping reforms can only be successful if all our students had access to highly qualified and certified teachers.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210(not subdivided), 215(not subdivided), 305(1) and 3004(1).

Assessment of public comment: No public comment received.

Amendment of Section 100.2(dd) of the Regulations of the Commissioner of Education Relating to Annual Professional Performance Reviews

Description of Rule: The purpose of the addition of Section 100.2(dd) of the Commissioner's Regulations is to require each school district and BOCES to establish a prescribed plan for the annual professional performance review of its teachers providing instructional services or pupil personnel services. The amendment requires the governing body of each school district and BOCES to adopt a plan for the annual professional performance review of its teachers providing instructional service or pupil personnel services by September 1, 2000. The amendment prescribes criteria that school districts or BOCES must use for the evaluation of teachers providing instructional services in the following areas: content knowledge, preparation, instructional delivery, classroom management, student development, student assessment, collaboration, and reflective and responsive practice. Districts may supplement these State criteria with locally developed criteria, and the amendment permits a variance from the State criteria upon a finding by the Commissioner that the school district or BOCES has demonstrated a local model for the evaluation of teachers providing instructional services that has produced successful results. The amendment also requires the plan to describe the methods that the school district or BOCES employs to assess teachers' performance. The amendment requires the plan to describe how the school district or BOCES addresses the performance of teachers whose performance is evaluated as unsatisfactory, and requires the development of a teacher improvement plan for teachers so evaluated, which is to be developed by the district or BOCES in consultation with the teacher. In addition, the plan must describe how the school district or BOCES provides training in good practice for the conducting of performance evaluations to staff who perform them, or alternatively, shall state the fact that the school district or BOCES permits such personnel to participate in training in this subject offered by the State Education Department. Finally, pursuant to the Taylor Law, the amendment states that the procedures for the annual professional performance review are subject to collective bargaining.

Justification for continuation without modification: In 1998, the Regents enacted "Teaching to Higher Standards: New York's Commitment," which was the blueprint for the redesign of both pre-service and in-service teacher education in New York State. One of the critical components of this policy statement was to ensure that each teacher received a rigorous annual professional performance review which assessed the teacher's overall performance in the classroom. With the Regents sweeping reforms to K-12 educational system, they acknowledged the need to ensure that all teachers remain current and effective in the classroom to ensure that all students will attain the Regents

learning standards and graduation requirements. The requirement for annual professional performance review was strengthened by ensuring that critical components of the teacher's practice in the classroom were assessed, on an annual basis, by the district. The more rigorous annual professional performance review was another component to ensure that teachers remain current and effective in the classroom.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2), and 3604(8).

Assessment of public comment: No public comment received.

Section 100.2(o) of the Regulations of the Commissioner of Education - Professional Development Plans

Description of Rule: The rule requires each school district and BOCES to have a professional development plan, which describes how they will provide all of their teachers with substantial professional development opportunities. For plans covering the time period February 2, 2004 and thereafter, each school district or BOCES is required to describe in its plans how it will provide teachers it employs holding a professional certificate with opportunities to maintain such certificates in good standing based upon successfully completing 175 hours of professional development every five years. The intent is for school districts and BOCES to offer a menu of professional development opportunities to their teachers. Such opportunities may be in a variety of formats and offered by a variety of providers and include course work paid for by the school district or BOCES or the teacher, depending on local arrangements and how professional development offered outside the school day is collectively bargained. The amendment requires the professional development plan to be adopted by September 1, 2000 and annually thereafter. It requires the plan to be developed through collaboration with a professional development team, including the superintendent of schools or district superintendent or their designees, school administrators, teachers, at least one parent and curriculum specialist, a representative of a higher education institution provided that a qualified candidate is available, and others. A majority of the members of the professional development team must be teachers selected by their collective bargaining unit. Among other items, the plan must describe the alignment of professional development with New York standards and assessments, student needs, teacher capacities, and include a needs analysis, goals, objectives, strategies, activities and evaluation standards. It must also describe the manner in which the school district or BOCES will measure the impact of professional development on student achievement and teachers' practices.

Justification for continuation without modification: In 1998, the Board of Regents enacted "Teaching to Higher Standards: New York's Commitment," which was the blueprint for the redesign of both teacher pre-service and in-service programs in New York State. The Regents recognized the need to ensure that all teachers remain current with their professions and be given professional development focused on their capacities and the needs of their students. The Regents were guided by research which demonstrated that professional development, when locally developed, and focusing on student learning needs did improve the quality of instruction and student achievement. The enactment of the requirement of professional development plans ensured that local districts would collaborate to develop meaningful professional development to meet the needs of their teachers and students.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2).

Assessment of public comment: No public comment received.

Part 86- Albert Shanker National Board for Professional Teacher Standards Certification Grant Programs

Description of Rule: Part 86 of the Regulations of the Commissioner of Education defines the rights, obligations, application procedures, and grant delimitations pertaining to the Albert Shanker Grant, pursuant to Education Law section 3004-a, establishing such grant to support and encourage qualified New York State teachers seeking a National Teaching Certificate from the National Board for Professional Teaching Standards (NBPTS.) The National Board for Professional Teaching Standards (NBPTS) is a nonprofit organization

of teachers and other education stakeholders created in 1987 to assist in improving student learning through the establishment of higher, more rigorous standards of knowledge and performance for teachers. By defining and recognizing highly accomplished practice, a certificate awarded by the National Board attests that a teacher has been judged by his or her peers as one who meets meaningfully high and rigorous standards of knowledge and performance. He or she has demonstrated the ability, in a variety of settings, to make sound professional judgments about students' learning needs and to act effectively on those judgments. The NBPTS national teaching certificate has been recognized by many states as valid in lieu of a state teaching certificate and, in some, as worthy of a salary incrementation in recognition of ones' status as a "master teacher." The New York State Board of Regents accepts the NBPTS national teaching certificate in reciprocity towards a permanent NYS teaching certificate in a comparable subject title.

Eligible teachers receiving the Shanker grant are awarded up to \$2,000 toward the \$2,300 registration fees in support of this effort. All but \$300 of such registration fees are paid directly to the National Board for Professional Teaching Standards by SED. Individual candidates or their employing school districts also may be reimbursed for prior, authorized fees paid and/or for other approved expenditures in support of this effort, including up to three days for substitute teacher salary reimbursements, to a maximum of an additional \$500 for each candidate.

Justification for continuation without modification: The Shanker Grants help support rigorous and meaningful professional development for teachers, whether or not they become Board certified. The National Board process (portfolio and assessment center activities) causes teachers to consider student work as a consequence of their own work according to NBPTS standards, and the reinculcated habits of analytical and reflective practice appear to translate reliably into perceptions of changed teaching behaviors stimulating the growth of teachers content knowledge, knowledge of child development, and actual employment of a broader array of more effective strategies to facilitate teaching and learning across diverse student populations. Continued Department support for Part 86 and the Albert Shanker Grant is consistent with current Regents policy initiatives, NCLB, and seemingly omnipresent efforts to raise and maintain standards for teaching and learning with a level of reliability heretofore unattained.

Legal Basis for Rule: Education Law sections 207(not subdivided) and 3004-a(4).

Assessment of public comment: No public comment received.

#### OFFICE OF THE PROFESSIONS

Sections 3.3, 3.9, 17.1, 17.2, 17.4, 17.5, 17.6, 17.7, 17.9, 28.2, 28.3 and 28.6 of the Rules of the Board of Regents - Change in title of Chief Administrator of the Office of Professional Discipline and applicability of consent order and license surrender procedures to physicians, physician assistants and specialist assistants

Description of Rule: changed title of the chief administrator of the Office of Professional Discipline from "Executive Director of the Office of Professional Discipline" to "Director of the Office of Professional Discipline" and clarified the applicability of the consent order and license surrender procedures to physicians, physician assistants and specialist assistants.

Justification for continuation without modification: The rule is needed to implement a change in the internal organization of the Office of Professional Discipline. The rule also prescribes that the existing procedures set forth for physicians, physician assistants and specialist assistants are applicable to cases in which charges of professional misconduct were served on or before July 26, 1991, the effective date of Chapter 606 of the Laws of 1991. This is necessary because Chapter 606 provided the Department of Health with the responsibility for administering professional discipline proceedings against such licensees in cases served after that date, so that it is necessary to make clear that disciplinary proceedings for the three professions are not covered by the Education Department disciplinary procedures after that date. Since 1999, some of the sections have been amended to make necessary changes.

Legal Basis for Rule: Education Law sections 104(not subdivided),

207(not subdivided) and 6506(1) and (8) and Chapter 606 of the Laws of 1991.

Assessment of public comment: No public comment received.

Sections 3.47 and 3.50 of the Commissioner's Regulations - Doctor of Audiology

Description of Rule: The rule authorizes the conferral of the Doctor of Audiology (Au.D.) degree, for completion of a professionally oriented doctoral program in audiology.

Justification for continuation without modification: The rule is necessary to prescribe requirements for the conferral of the Au.D. degree. Since 1999, these sections have been amended to make necessary changes.

Legal Basis for the Rule: Education Law sections 207(not subdivided), 210(not subdivided), 218(1), 224(4) and 8206(2).

Assessment of public comment: No public comment received.

Sections 3.47 and 3.50 of the Rules of the Board of Regents - Doctor of Physical Therapy

Description of Rule: The rule authorizes the conferral of the Doctor of Physical Therapy (D.P.T.) degree, for completion of a professionally oriented doctoral program in physical therapy.

Justification for continuation without modification: The rule is necessary to prescribe requirements for the conferral of the D.P.T. degree. Since 1999, these sections have been amended to make necessary changes.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210(not subdivided), 218(1), 224(4) and 6734(b).

Assessment of public comment: No public comment received.

Sections 17.5, 17.6, 24.2 and 24.7 of the Rules of the Board of Regents - Professional discipline proceedings

Description of Rule: The rule clarified the role of the Committee on the Professions in consent order and license surrender procedures, which resolve charges of professional misconduct in disciplinary proceedings conducted pursuant to Title VIII of the Education Law.

Justification for continuation without modification: The rule codifies the existing procedures for the settling of cases of professional misconduct. Since 1999, some of the sections have been amended to make necessary changes.

Legal Basis for Rule: Education Law sections 201(not subdivided), 6504(not subdivided), 6506(1), (4) and (10), and 6507(4)(h).

Assessment of public comment: No public comment received.

Sections 29.2 and 29.7 of the Rules of the Board of Regents and section 63.6 of the Commissioner's Regulations - Pharmacy

Description of Rule: The rule authorizes the electronic transmission of prescriptions and the transfer of prescriptions between pharmacies for refills; establishes requirements for the use of a common electronic database used to maintain dispensing information; removes outdated references in registration requirements for pharmacies; authorizes the waiver of regulations to permit demonstration projects; authorizes unlicensed persons to enter and retrieve prescription data, under the supervision of a pharmacist, and clarify their permitted duties; increases from one to two the number of unlicensed persons a pharmacist may supervise; amends requirements for the offering of counseling to patients by pharmacists or pharmacy interns; and updates titles of unlicensed health professions in Regents Rule section 29.2.

Justification for continuation without modification: The rule is needed to ensure that the public will be protected in its use of pharmaceutical services, while permitting pharmacies to employ recent developments in the electronic technologies. The requirements for the use of a common electronic file or database used to maintain dispensing information are needed to ensure the confidentiality of this information. The rule also frees pharmacists and pharmacy interns from routine tasks so they may have sufficient time to directly interact with patients, assess patient profiles and provide enhanced patient counseling. The rule is also needed to specify additional requirements for the offering of counseling by pharmacists and pharmacist assistants. Since 1999, some of the sections have been amended to make necessary changes.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1) and (9), 6507(2)(a), 6509(9), 6801(not subdivided), 6803(not subdivided), 6804(a) and (b), 6806(1), 6808(2)(a)(3) and 6810(1).

Assessment of public comment: No public comment received.

Section 61.15 of the Commissioner's Regulations - Dentists

Description of Rule: The rule implements the provisions of Chapter 354 of the Laws of 1998, which amended Education Law section 6604-a(4), and clarifies qualifications of acceptable sponsors of continuing education for dentists.

Justification for continuation without modification: The rule establishes standards for the approval of sponsors of continuing education relating to facilities, equipment and financial and physical resources, and otherwise implements statutory provisions. Since 1999, the section has been amended to make necessary changes.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6502(1), 6504(not subdivided), 6507(2)(a), and 6604-a(2) and (4).

Assessment of public comment: No public comment received.

Section 66.5 of the Commissioner's Regulations - Optometry

Description of Rule: The rule clarifies and implements the requirements of Education Law section 7101-a and Chapter 517 of the Laws of 1995, relating to the certification of optometrists to use phase two therapeutic pharmaceutical agents, including clarifying clinical training requirements, examination requirements, reporting requirements and continuing education requirements.

Justification for continuation without modification: The rule is necessary to implement statutory requirements. Since 1999, the section has been amended to make necessary changes.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6502(1), 6504(not subdivided), 6507(2)(a), (3)(a) and (4)(a), 6508(1) and (2), 7101(not subdivided), 7101-a(1)(f), (3)(4), (7), (9), (9-a) and (11), and sections 3 and 4(b) of Chapter 517 of the Laws of 1995.

Assessment of public comment: No public comment received.

Section 66.5 of the Commissioner's Regulations - Optometry

Description of Rule: The rule specified two additional classes of drugs that an optometrist who is certified to use phase two therapeutic pharmaceutical agents may use and prescribe to treat patients.

Justification for continuation without modification: The rule adds two additional drugs, carbonic anhydrase inhibitors and prostaglandin analogs, that demonstrate equivalence to a class of drugs that appropriately certified optometrists are now authorized to use to treat glaucoma. Since 1999, this section has been amended to make necessary changes.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6507(2)(a) and 7101-a(1)(f), (10)(c) and (12).

Assessment of public comment: No public comment received.

Section 75.1 of the Commissioner's Regulations - Speech Language Pathology and Audiology

Description of Rule: To prescribe the education requirements for licensure in speech-language pathology and/or audiology by adjusting the definition of study that is equivalent to a master's degree program in the field, permitting doctoral level graduates to qualify and redistributing the education practicum hours to be compatible with national standards.

Justification for continuation without modification: This rule has been extensively revised, effective October 9, 2008, to further update the requirements for licensure in speech language pathology and in audiology. The new rule aligned New York State licensing requirements with federal Medicaid requirements, expanded opportunities for qualified speech-language pathologists and audiologists in other jurisdiction to become licensed in New York state, and addressed shortages in the number of speech-language pathologists in New York State school districts. Since 1999, the section has been amended to make necessary changes.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1) and (10), 6507(2)(a) and 8206(2).

Assessment of public comment: No public comment received.

#### OFFICE OF MANAGEMENT SERVICES

Section 187.7 of the Commissioner's Regulations - Freedom of Information Law

Description of Rule: The rule revised the fee charged by the Department to produce computer records requested under the Freedom of Information Law.

Justification for continuation without modification: The rule changed the time-charge to reflect the actual cost incurred by the Department.

Legal Basis for Rule: Education Law sections 207(not subdivided) and 305(6) and Public Officers Law sections 87(1)(b).

Assessment of public comment: No public comment received.

#### OFFICE OF CULTURAL EDUCATION

Sections 185.5 and 185.11 - Local Government Records Management.

Description of Rule: The rule revises Records Retention and Disposition Schedule MU-1 to make needed changes and additions to minimum retention periods for records of cities, towns, villages and fire districts.

Justification for continuation without modification: Section 57.25(2) of Arts and Cultural Affairs Law requires the commissioner of education to develop, adopt by regulation, issue and distribute to local governments records retention and disposition schedules establishing minimum legal retention periods. The issuance of such schedules constitutes formal consent by the commissioner to the disposition of records that have been maintained in excess of the retention periods set forth in the schedules. The 1999 revisions to the rule make necessary changes and additions to ensure that concerned local governments have up-to-date standards for records retention and disposition.

Legal basis for Rule: Education Law section 207 (not subdivided) and Arts and Cultural Affairs Law section 57.25(2).

Assessment of public comment: No public comment received

### Department of Taxation and Finance

Pursuant to section 207 of the State Administrative Procedure Act (SAPA) the Department of Taxation and Finance intends to review the following rules during 2020 and invites written comments on the continuation or modification of these rules in order to assist the Department in the required review. We will consider comments that are received by February 17, 2020. Any questions concerning the items listed in this rule review or comments regarding the continuation of the rules being reviewed should be referred to: Office of Counsel, Department of Taxation and Finance, W.A. Harriman Campus, Building 9, Room 200, Albany, New York 12227. Telephone: (518) 530-4153, Email address: tax.regulations@tax.ny.gov.

#### RULES ADOPTED IN 2017

1. TAF-51-16-00002-A Metropolitan Transportation Business Tax Surcharge.

This rule amended section 9-1.2 of Title 20 NYCRR.

Analysis of the need for the rule: The rule added new subdivision (d) to section 9-1.2 of Part 9 to establish the metropolitan transportation business tax surcharge rate for tax year 2018. Subdivision (d) complies with Tax Law section 209-B(1)(f), which requires the Commissioner to set the rate for taxable years beginning on or after January 1, 2018 and before January 1, 2019, and follows subdivision (c), which set the rate for taxable years beginning on or after January 1, 2017 and before January 1, 2018. The rate set under subdivision (c) was 28.3 percent of the tax imposed under Tax Law section 209, the rate set under subdivision (b) was 28 percent of the tax imposed under section 209; and the previously established statutory rate was 25.6 percent. Subdivision (d) provided a rate of 28.6 percent of the tax imposed under Tax Law section 209.

The notice of proposed rulemaking did not include a regulatory flexibility analysis, a rural area flexibility analysis or a job impact statement.

Legal basis for the rule: Tax Law, sections 171, subdivision First; 209-B, subdivision First; and L. 2014, ch. 59, part A, section 7.

## RULES ADOPTED IN 2015

1. TAF-48-14-00003-A Filing Requirements for Farm Distilleries Under Article 18 of the Tax Law.

This rule amended section 60.1 of Title 20 NYCRR, relating to filing requirements for farm distilleries under Article 18 of the Tax Law.

Analysis of the need for the rule: The rule amended section 60.1(a) of the Alcoholic Beverage Tax Regulations to allow entities licensed by the State Liquor Authority of New York State as a farm distillery, pursuant to section 61 of the Alcoholic Beverage Control Law, to apply to file annual alcoholic beverage tax returns rather than monthly returns as previously required. Records show that the tax liability of these farm distilleries is minimal; annual filing would reduce the burden placed upon these filers.

The notice of proposed rulemaking did not include a regulatory flexibility analysis, a rural area flexibility analysis or a job impact statement.

Legal basis for the rule: Tax Law sections 171, subdivision First, 429(1) and 436 (not subdivided).

## RULES ADOPTED IN 2010

1. TAF-49-09-00002-A Informational Returns for Wholesale Dealers of Cigarettes and Tobacco Products.

This rule amended sections 75.2 and 90.1 of 20 NYCRR regarding informational returns for cigarette and tobacco products wholesale dealers.

Analysis of the need for the rule: The rule requires the filing of quarterly informational returns for cigarette and tobacco products wholesale dealers to enable the Department to better ensure compliance with the provisions of Articles 20 and 28 of the Tax Law.

The notice of proposed rulemaking included a regulatory flexibility analysis and a rural area flexibility analysis but did not include a job impact statement.

Legal basis for the rule: Tax Law, sections 171, subd. First; 475 (not subdivided); and 1142(12).

2. TAF-27-10-00013-A Sales of Cigarettes on Indian Reservations.

The rule adds sections 74.6 and 74.7 to Title 20 NYCRR, implementing certain statutory provisions concerning sales of cigarettes on Indian reservations.

Analysis of the need for the rule: The rule concerns the collection of taxes on sales of cigarettes made on New York State Indian reservations as required by sections 471 and 471-e of the Tax Law and provides procedures to be followed by New York State licensed cigarette stamping agents for the certification process required by section 471 of the Tax Law.

The notice of proposed rulemaking included a regulatory flexibility analysis and a rural area flexibility analysis but did not include a job impact statement.

Legal basis for the rule: Tax Law, sections 171, subd. First; 471(1), (4), and (5); 471-e; 475 (not subdivided); and L.2010, ch 134, part D.

3. TAF-35-10-00003-A Cigarette Tax.

This rule amended sections 70.1 and 80.2 and Parts 74 and 82, repealed section 79.2, and added new section 79.2 to Title 20 NYCRR, to implement statutory changes relating to the excise tax on cigarettes.

Analysis of the need for the rule: The rule implements statutory provisions increasing the rate of the excise tax on cigarettes from \$2.75 for each 20 cigarettes, or fraction thereof, to \$4.35, effective July 1, 2010. It also imposes a tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business on June 30, 2010, based on the increased rate of cigarette excise tax, and sets the rate of commissions allowable to agents as compensation for affixing cigarette stamps relating to the new rate of tax.

The notice of proposed rulemaking included a regulatory flexibility analysis and a rural area flexibility analysis but did not include a job impact statement.

Legal basis for the rule: Tax Law, sections 171, subd. First; 472(1); 475 (not subdivided); and L. 2010, ch 134, part D.

4. RPS-39-09-00025-A Reimbursement of Training Expenses.

This rule amended former Part 188 of Title 9 NYCRR to revise the continuing education requirements regarding reimbursement.

Analysis of the need for the rule: The rule assured that training reimbursement funds were managed effectively in a time of fiscal crisis.

The notice of proposed rulemaking did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, sections 202(1)(l); 318(4); and 1530(3)(f).

5. TAF-39-10-00002-A City of New York Withholding Tables and Other Methods Applicable January 1, 2011.

Analysis of the need for the rule: the rule amended Appendix 10-C of 20 NYCRR to provide current City of New York withholding tables and other methods. The amendments to Appendix 10-C reflected the revision of the City of New York tax tables in accordance with the increased rate of New York City personal income tax applicable to income over \$500,000 enacted by Part EE of Chapter 57 of the Laws of 2010, implemented over a twelve-month period rather than the shorter implementation period required for tax year 2010. This rule also reflected the increase in the City of New York supplemental withholding tax rate to reflect the twelve-month implementation period to be applied to supplemental wage payments, rather than the shorter period applicable for tax year 2010.

The notice of proposed rulemaking included a regulatory flexibility analysis and a rural area flexibility analysis but did not include a job impact statement.

Legal basis for the rule: Tax Law, sections 171, subdivision First; 671(a); 1309 (not subdivided); and 1312(a), the Administrative Code of the City of New York, sections 11-1771(a) and 11-1791(a); and L. 2010, ch. 57, Part EE, section 4.

## RULES ADOPTED IN 2005

1. TAF-07-05-00009-A Signature Requirements Applicable to Tax Return Preparers

This rule amended sections 153.6 and 158.12 of Title 20 NYCRR, concerning signature requirements applicable to tax return preparers.

Analysis of the need for the rule: The rule removed the mandatory signature requirement for tax return preparers from the personal income tax regulations, conforming New York State requirements to the corresponding federal requirements.

The notice of proposed rulemaking did not include a regulatory flexibility analysis, a rural area flexibility analysis or a job impact statement.

Legal basis for the rule: Tax Law sections 171, subd. First; 658(g); and 697(a).

2. TAF-50-04-00004-A Refunds and Credits for Vessel Operators Engaged in Local Transit Service

This rule amended section 534.4(a) and (b) and added new section 534.10 to Title 20 NYCRR to implement statutory changes making refund and credit provisions applicable to omnibus carriers also apply to certain vessel operators.

Analysis of the need for the rule: The rule made permanent the emergency measure that implemented Part M of Chapter 60 of the Laws of 2004, which provides that certain refunds and credits of sales and compensating use taxes are allowed for vessel operators engaged in local transit service. Part M required the Commissioner of Taxation and Finance to define the implementing terms "local transit service," "vessel hours," and "total hours operated" by rule.

The notice of proposed rulemaking did not include a regulatory flexibility analysis, a rural area flexibility analysis or a job impact statement.

Legal basis for the rule: Tax Law sections 171, subd. First; 1119(b); 1142(1) and (8); 1250 (not subdivided); and L. 2004, ch 60, part M.

3. RPS-14-05-00003-A Notice of Public Condemnation Hearings.

This rule amended former Part 185 of Title 9 NYCRR to establish standards for ascertaining and reporting assessment record billing owner (ARBO) information in connection with public condemnation hearings in accordance with Chapter 450 of the Laws of 2004.

Analysis of the need for the rule: The rule facilitated the implementation of this ARBO notification requirement by providing condemnors and assessment officials with greater clarity as to how to identify ARBOs, protecting the interests of affected property owners to the greatest extent practicable, and enabling worthwhile public projects to go forward after full public consideration of their merits.

The notice of proposed rulemaking did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, section 202(1)(q), as added by L.2004, ch 450.

4. RPS-14-05-00004-A State Reimbursement of Expenses of Local Officials in Satisfying Training Requirements.

This rule amended former section 188-2.9(b)(4) of Title 9 of NYCRR to authorize payment of late vouchers if funds are available.

Analysis of the need for the rule: The annual apportionment allowed for reimbursement of expenses related to training is not always sufficient. This rule provides the proration of certain reimbursements if necessary.

The notice of proposed rulemaking did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, sections 202(1)(l); 318(4); 1530(3)(f); and L.2004, ch 53.

#### RULES ADOPTED IN 2000

##### 1. TAF-11-00-00007-A. Cigarette Tax.

This rule amended Parts 70, 74, 79, 80, and 82 of Title 20 NYCRR to reflect certain statutory changes relating to New York State cigarette excise tax.

Analysis of the need for the rule: The rule reflects the statutory increase in the rate of New York State cigarette excise tax that was effective on March 1, 2000; to provide for commissions allowable to cigarette tax agents based upon the face value of cigarette tax stamps as of March 1, 2000; to effectuate the floor tax on cigarettes and unaffixed stamps in inventory as of the close of business on February 29, 2000; to reflect statutory changes to an agent's presumed cost of doing business; and to reflect such changes in the various regulatory illustrations.

The notice of proposed rulemaking did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Tax Law sections 171, subd. First; 475 (not subdivided); and L.1999, ch 1.

2. TAF-31-00-00002-A Returns and Payments of Tax on Alcoholic Beverages.

The rule amends section 60.1(a) of Title 20 NYCRR to allow certain distributors to file annual, rather than monthly, alcoholic beverage tax returns.

Analysis of the need for the rule: The rule allows certain distributors that are micro-breweries or restaurant brewers to file annual, rather than monthly alcoholic beverage tax returns, thereby reducing the filing burden of such distributors and resulting in long-term cost benefits to the department.

The notice of proposed rulemaking did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Tax Law sections 171, subd. First; 429(1); and 436 (not subdivided).

##### 3. TAF-48-99-00001-A Excise Tax Stamps.

This rule amended section 75.1(f) of Title 20 NYCRR to implement requirements of the Tobacco Escrow Funds Act (Public Health Law, Article 13-G).

Analysis of the need for the rule: The department was required by the Tobacco Escrow Funds Act (Public Health Law, Article 13-G) to promulgate regulations necessary to ascertain the amounts of State excise tax paid on cigarettes sold within the State, as measured by the number of State excise tax stamps affixed to packages of cigarettes.

This rule is necessary for New York to receive its apportioned amount of certain payments made pursuant to the "Master Settlement Agreement" (entered into on November 23, 1998 by leading United States tobacco product manufacturers and forty-six states, including New York.)

Legal basis for the Rule: Tax Law sections 171, subd. First; 475 (not subdivided); Public Health Law, section 1399-oo(10); and L.1999, ch 536.

##### 4. RPS-40-99-00008-A Assessment Rolls - License Fees.

This rule amended former subpart 190-3 of Title 9 NYCRR to revise the schedule of annual license fees and to clarify certain liabilities for charges.

Analysis of the need for the rule: The annual fee paid by local government assessing units that use the New York State Real Property System (RPS) software to help defray the cost of the software development, maintenance, documentation and distribution needed to be increased based on enhancements made to the software. In addition, the rule provided for licensing fees to be charged to other users of the RPS software.

The notice of proposed rulemaking did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, section 202(1)(l); State Finance Law, section 97-kk.

##### 5. RPS-48-99-00003-A Residential Assessment Ratios.

This rule amended former subpart 191-3 of Title 9 NYCRR to revise the standard for recomputation of residential assessment ratios.

Analysis of the need for the rule: The previous rule provided that a request for a revised residential assessment ratio (RAR) needed to result in a change of 2% for a new RAR to be established. This amendment reduced the standard from 2% to .01%, providing more accurate measures of the level of assessment of residential property.

The notice of proposed rulemaking did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, sections 202(1)(l) and 738. Legal basis for the rule: Real Property Tax Law, sections 202(1)(l) and 1573.

##### 6. RPS-18-00-00008-A Inventories of Physical Characteristics.

This rule amended former sections 190-1.1 and 192-3.2 of Title 9 NYCRR to modify standards for inventories of physical characteristics.

Analysis of the need for the rule: The Real Property Tax Law requires the assessor to ascertain inventory data related to real property located in the assessing unit. This rule modified the requirements to establish a more realistic and workable list of property characteristics that would meet the statutory requirements.

The notice of proposed rulemaking did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, sections 202(1); 500; and 501.

##### 7. TAF-36-00-00003-A Federal Preparer Tax Identification Numbers

The rule amended section 158.12 of 20 NYCRR relating to individual paid preparers.

Analysis of the need for the rule: This rule extended to individual paid preparers the federal option to use federally assigned Preparer Tax Identification Numbers instead of social security numbers when an individual identifying number of a paid preparer is required on New York State income tax returns that they prepare.

Legal basis for the rule: Tax Law sections 171 subd. First; 658(g)(1) and (2); and 697(a).

##### 8. TAF-48-99-00022-A Verification of Income

This rule amended section 201.1 of Title 20 NYCRR concerning verification of income of tenants in rent regulated housing.

Analysis of the need for the rule: The rule changed the provisions

applicable to information contained in responses by the Department to the Division of Housing and Community Renewal (DHCR) concerning requests for verification of income of certain tenants residing in rent regulated housing and reflected statutory changes in the related income threshold.

Legal Basis for the rule: Tax Law sections 171, subd. First and 171-b(3)(a) and (b).

9. TAF-16-00-00002-A Trash and Debris Removal Services

This rule amended Part 541 of 20 NYCRR in relation to trash and debris removal service.

Analysis of the need for the rule: The rule amends Part 541 to authorize contractors to purchase trash and debris removal services exempt from sales tax as purchases for resale when such services are an integral part of maintaining, servicing, or repairing real property.

Legal basis for rule: Tax Law sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided).



# SECURITIES OFFERINGS

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## STATE NOTICES

Published pursuant to provisions of General Business Law  
[Art. 23-A, § 359-e(2)]

## DEALERS; BROKERS

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ACM Venture LLC  
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Chicago Infill Industrial Acquisition II LP  
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*Partnership* — Colchis RP GP LLC

CQS RCR Fund I Feeder (DL), LP  
4th Fl., One Strand, London, United Kingdom, WC2N 5HR  
*Partnership* — CQS RCR Fund I GP Limited

CQS RCR Fund I Feeder (EL), LP  
4th Fl., One Strand, London, United Kingdom, WC2N 5HR  
*Partnership* — CQS RCR Fund I GP Limited

CQS RCR Fund I Master (DL), LP  
4th Fl., One Strand, London, United Kingdom, WC2N 5HR  
*Partnership* — CQS RCR Fund I GP Limited

CQS RCR Fund I Master (EL), LP  
4th Fl., One Strand, London, United Kingdom, WC2N 5HR  
*Partnership* — CQS RCR Fund I GP Limited

DCP Asia Co-Investment Fund I, L.P.  
190 Elgin Ave., George Town, Grand Cayman, KY1-9005, Cayman Islands  
*Partnership* — DCP Co-Inv GP Limited

DCP Asia Co-Investment Fund I Feeder I, L.P.  
190 Elgin Ave., George Town, Grand Cayman, KY1-9005, Cayman Islands  
*State or country in which incorporated* — DCP Co-Inv GP Limited

Emerging Markets Equity Series of Global Asset Management Strategies, LLC  
50 S. Sixth St., Suite 2305, Minneapolis, MN 55402  
*State or country in which incorporated* — Delaware

Fossil Fuel Free Series of Global Asset Management Strategies, LLC  
50 S. Sixth St., Suite 2305, Minneapolis, MN 55402  
*State or country in which incorporated* — Delaware

FTV VI, L.P.  
555 California St., Suite 2850, San Francisco, CA 94104  
*Partnership* — FTV Management VI, LLC

GI Data Infrastructure Fund LP  
188 The Embarcadero, Suite 700, San Francisco, CA 94105  
*Partnership* — GI GP DI LP

GI Data Infrastructure Fund-A LP  
188 The Embarcadero, Suite 700, San Francisco, CA 94105  
*Partnership* — GI GP DI LP

Greene Concepts, Inc.  
13195 U.S. Hwy. 221 N, Marion, NC 28752  
*State or country in which incorporated* — New York

Haitou U.S. Fund, L.P.  
747 Third Ave., 26th Fl., New York, NY 10017  
*Partnership* — Haitou U.S. Fund GP, LLC, general partner

Heritage at Forest Acres Mezzanine Debt Fund, LLC  
99 S. New York Ave., Winter Park, FL 32789  
*State or country in which incorporated* — Florida

HGGC Fund IV, L.P.  
1950 University Ave., Suite 350, Palo Alto, CA 94303  
*Partnership* — HGGC Fund IV GP, L.P.

HGGC Fund IV-A, L.P.  
1950 University Ave., Suite 350, Palo Alto, CA 94303  
*Partnership* — HGGC Fund IV GP, L.P.

Livingston at Laurel Hills, LLC  
22144 Clarendon Ave., Suite 303, Woodland Hills, CA 91367  
*State or country in which incorporated* — Delaware

Lumber City Partners LLC  
8014 Cumming Hwy., Suite 403369, Canton, GA 30115  
*State or country in which incorporated* — Georgia

Manufactured Housing Properties, Inc.  
136 Main St., Pineville, NC 28134  
*State or country in which incorporated* — Nevada

NorthPoint Industrial Fund IV, LLC  
4825 NW. 41st St., Suite 500, Riverside, MO 64150

Obsidian Investment Fund 2019, LLC  
718 W. Business Hwy. 60, Dexter, MO 63841  
*Partnership* — Obsidian Investment Manager, LLC

OEP VII ORS MEDCO Co-Investment Partners, L.P.  
510 Madison Ave., 19th Fl., New York, NY 10022  
*State or country in which incorporated* —  
*Partnership* — OEP VII, L.P., general partner

Peppertree Capital Fund VIII QP, LP  
57 E. Washington St., Chagrin Falls, OH 44022  
*Partnership* — Peppertree Capital FVIII, LP

Rain Tree Apts JV LLC  
One World Trade Center, Suite 8500, New York, NY 10007  
*Partnership* — Rain Tree Apts MM LLC

Reserve at Heritage Holdings LLC, The  
14 E. 33rd St., #7s, New York City, NY 10016  
*State or country in which incorporated* — Missouri limited liability  
company

Rhône Partners VI L.P.  
12 E. 49th St., 20th Fl., New York, NY 10017  
*Partnership* — Rhône Captial VI L.P.

Rhône Offshore Partners VI L.P.  
12 E. 49th St., 20th Fl., New York, NY 10017  
*Partnership* — Rhône Captial VI L.P.

Rockbridge Portfolio Fund II Mergeco L.P.  
4100 Regal St., Suite G, Columbus, OH 43219  
*Partnership* — RBC Partners III LLC

SWLA Mineral Fund, LLC  
213 Katherine Dr., Flowood, MS 39232  
*Partnership* — Rubric Management, LLC

Thoma Bravo Explore Fund, L.P.  
150 N. Riverside Plaza, Suite 2800, Chicago, IL 60606  
*Partnership* — Thoma Bravo Explore Partners, L.P.

Thoma Bravo Explore Fund A, L.P.  
150 N. Riverside Plaza, Suite 2800, Chicago, IL 60606  
*Partnership* — Thoma Bravo Explore Partners, L.P.

Thoma Bravo Explore Fund P, L.P.  
150 N. Riverside Plaza, Suite 2800, Chicago, IL 60606  
*Partnership* — Thoma Bravo Explore Partners, L.P.

Trilantic Europe VI SCSp  
Five rue Heienhaff, L-1736 Senningerberg, Luxembourg  
*Partnership* — Trilantic Europe VI GP S.a r.l.

Troy Laundry Residential Fund LLC  
133 N. Jefferson St., 4th Fl., Chicago, IL 60661  
*State or country in which incorporated* — Delaware

Valor Equity Partners V L.P.  
875 N. Michigan Ave., Suite 3214, Chicago, IL 60611  
*Partnership* — Valor Equity Associates V L.P.

Valor Equity Partners V-A L.P.  
875 N. Michigan Ave., Suite 3214, Chicago, IL 60611  
*Partnership* — Valor Equity Associates V L.P.

Valor Equity Partners V-B L.P.  
875 N. Michigan Ave., Suite 3214, Chicago, IL 60611  
*Partnership* — Valor Equity Associates V L.P.

Waldman Capital Management, LLC  
16214 Cabernet Dr., Delray Beach, FL 33446  
*State or country in which incorporated* — Delaware

WHI Real Estate Partners V, L.P.  
353 N. Clark St., Suite 1950, Chicago, IL 60654  
*Partnership* — WHIREP V GP LLC

WHI Real Estate Partners V-TE, L.P.  
353 N. Clark St., Suite 1950, Chicago, IL 60654  
*Partnership* — WHIREP V GP LLC

WRE at 949 LP  
700 N. Pearl St., Suite N1650, Dallas, TX 75201  
*Partnership* — WRE at 949 GP LLC

# ADVERTISEMENTS FOR BIDDERS/CONTRACTORS

## SEALED BIDS

### PROVIDE SUMP PUMP

Robert Abrams Building for Law and Justice  
Albany, Albany County

Sealed bids for Project No. 45987-P, comprising a contract for Plumbing Work, Provide Sump Pump, Elevator Pits, Robert Abrams Building for Law and Justice, Empire State Plaza, Albany (Albany County) NY, will be received by the Office of General Services (OGS), Design & Construction Group (D&C), Division of Contract Management, 35th Fl., Corning Tower, Empire State Plaza, Albany, NY 12242, until 2:00 p.m. on Wednesday, January 8, 2020, when they will be publicly opened and read. Each bid must be prepared and submitted in accordance with the Instructions to Bidders and must be accompanied by a certified check, bank check, or bid bond in the amount of \$9,400 for P.

Further, Wicks Exempt Projects require a completed form BDC 59 (Wicks Exempt List of Contractors) be filled out and submitted (included in a separate, sealed envelope) in accordance with Document 002220, Supplemental Instructions to Bidders – Wicks Exempt. Failure to submit this form correctly will result in a disqualification of the bid.

All successful bidders will be required to furnish a Performance Bond and a Labor and Material Bond in the statutory form of public bonds required by Sections 136 and 137 of the State Finance Law, each for 100% of the amount of the Contract estimated to be between \$100,000 and \$250,000 for P.

Pursuant to State Finance Law §§ 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OGS D&C and a bidder during the procurement process. A bidder is restricted from making contacts from the earliest posting, on the OGS website, in a newspaper of general circulation, or in the Contract Reporter of written notice, advertisement or solicitation of offers through final award and approval of the contract by OGS D&C and the Office of the State Comptroller (“Restricted Period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff are Jessica Hoffman, Carl Ruppert, and Pierre Alric in the Division of Contract Management, telephone (518) 474-0203, fax (518) 473-7862 and John Lewyckyj, Deputy Director, Design & Construction Group, telephone (518) 474-0201, fax (518) 486-1650. OGS D&C employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the bidder is debarred from obtaining governmental Procurement Contracts. Bidders responding to this Advertisement must familiarize themselves with the State Finance Law requirements and will be expected to affirm that they understand and agree to comply on the bid form. Further information about these requirements can be found within the project manual or at: <http://www.ogs.ny.gov/aboutOGS/regulations/defaultAdvisoryCouncil.html>

The substantial completion date for this project is 322 days after the Agreement is approved by the Comptroller.

The only time prospective bidders will be allowed to visit the job site to take field measurements and examine existing conditions of the project area will be at 10:00 a.m. on December 20, 2019, at the Empire State Plaza, Concourse Level, North End at the Legislative Lobby in Albany NY. Prospective bidders are urged to visit the site at this time. Prospective bidders or their representatives attending the pre-bid site visit will not be admitted on facility grounds without proper photo identification. Note that parking restrictions and security provisions will apply and all vehicles will be subject to search.

Phone the office of Ramona Pierce (518-300-0116 or [ramona.pierce@ogs.ny.gov](mailto:ramona.pierce@ogs.ny.gov)) a minimum of 48 hours in advance of the date to provide the names of those who will attend the pre-bid site visit.

Pursuant to New York State Executive Law Article 15-A and the rules and regulations promulgated thereunder, OGS is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-owned Business Enterprises (“MWBES”) and the employment of minority group members and women in the performance of OGS contracts. All bidders are expected to cooperate in implementing this policy. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs) for Construction Work. The total contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under this Contract.

The Office of General Services reserves the right to reject any or all bids.

The Bidding and Contract Documents for this Project are available on compact disc (CD) only, and may be obtained for an \$8.00 deposit per set, plus a \$2.00 per set shipping and handling fee. Contractors and other interested parties can order CD’s on-line through a secure web interface available 24 hours a day, 7 days a week. Please use the following link for ordering and payment instructions: <https://online.ogs.ny.gov/dnc/contractorConsultant/esb/ESBPlansAvailableIndex.asp>

For questions about purchase of bid documents, please send an e-mail to [DCPlans@ogs.ny.gov](mailto:DCPlans@ogs.ny.gov), or call (518) 474-0203.

For additional information on this project, please use the link below and then click on the project number: <https://online.ogs.ny.gov/dnc/contractorConsultant/esb/ESBPlansAvailableIndex.asp>

By *John D. Lewyckyj, Deputy Director*  
OGS - Design & Construction Group



# MISCELLANEOUS NOTICES/HEARINGS

## Notice of Abandoned Property Received by the State Comptroller

Pursuant to provisions of the Abandoned Property Law and related laws, the Office of the State Comptroller receives unclaimed monies and other property deemed abandoned. A list of the names and last known addresses of the entitled owners of this abandoned property is maintained by the office in accordance with Section 1401 of the Abandoned Property Law. Interested parties may inquire if they appear on the Abandoned Property Listing by contacting the Office of Unclaimed Funds, Monday through Friday from 8:00 a.m. to 4:30 p.m., at:

1-800-221-9311  
or visit our web site at:  
[www.osc.state.ny.us](http://www.osc.state.ny.us)

Claims for abandoned property must be filed with the New York State Comptroller's Office of Unclaimed Funds as provided in Section 1406 of the Abandoned Property Law. For further information contact: Office of the State Comptroller, Office of Unclaimed Funds, 110 State St., Albany, NY 12236.

## PUBLIC NOTICE

Department of Civil Service

PURSUANT to the Open Meetings Law, the New York State Civil Service Commission hereby gives public notice of the following:

Please take notice that the regular monthly meeting of the State Civil Service Commission for January 2020 will be conducted on January 15 and January 16 commencing at 10:00 a.m. This meeting will be conducted at NYS Media Services Center, Suite 146, South Concourse, Empire State Plaza, Albany, NY with live coverage available at <https://www.cs.ny.gov/commission/>.

*For further information, contact:* Office of Commission Operations, Department of Civil Service, Empire State Plaza, Agency Bldg. One, Albany, NY 12239, (518) 473-6598

## PUBLIC NOTICE

Department of Health

Pursuant to 42 CFR Section 447.205, the Department of Health hereby gives public notice of the following:

The Department of Health proposes to amend the Title XIX (Medicaid) State Plan for long term care services to comply with Public Health Law Section 2808 (2-c)(d). The following changes are proposed:

### Long Term Care Services

Effective on and after January 1, 2020, the quality incentive program for non-specialty nursing homes will continue to recognize improvement in performance and provide for other minor modifications.

There is no additional estimated annual change to gross Medicaid expenditures attributable to this initiative for State Fiscal year 2020/2021.

The public is invited to review and comment on this proposed State Plan Amendment, a copy of which will be available for public review on the Department's website at <http://www.health.ny.gov/regulations/>

state\_plans/status. Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

For the New York City district, copies will be available at the following places:

New York County  
250 Church Street  
New York, New York 10018

Queens County, Queens Center  
3220 Northern Boulevard  
Long Island City, New York 11101

Kings County, Fulton Center  
114 Willoughby Street  
Brooklyn, New York 11201

Bronx County, Tremont Center  
1916 Monterey Avenue  
Bronx, New York 10457

Richmond County, Richmond Center  
95 Central Avenue, St. George  
Staten Island, New York 10301

*For further information and to review and comment, please contact:* Department of Health, Division of Finance and Rate Setting, 99 Washington Ave., One Commerce Plaza, Suite 1432, Albany, NY 12210, e-mail: [spa\\_inquiries@health.ny.gov](mailto:spa_inquiries@health.ny.gov)

## PUBLIC NOTICE

Department of Health

Pursuant to 42 CFR Section 447.205, the Department of Health hereby gives public notice of the following:

The Department of Health proposes to amend the Title XIX (Medicaid) State Plan for institutional services related to temporary rate adjustments to providers that are undergoing closure, merger, consolidation, acquisition or restructuring themselves or other health care providers. These payments are authorized by § 2826 of New York Public Health Law. The following changes are proposed:

### Institutional Services

The temporary rate adjustments have been reviewed and approved for the Strong Memorial Hospital with aggregate payment amounts totaling up to \$1,153,579 for the period January 1, 2020 through March 31, 2020, \$2,588,381 for the period April 1, 2020 through March 31, 2021 and \$2,235,555 for the period April 1, 2021 through March 31, 2022.

The public is invited to review and comment on this proposed State Plan Amendment, a copy of which will be available for public review on the Department's website at <http://www.health.ny.gov/regulations/> state\_plans/status. Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

For the New York City district, copies will be available at the following places:

New York County  
250 Church Street  
New York, New York 10018

Queens County, Queens Center  
3220 Northern Boulevard  
Long Island City, New York 11101

Kings County, Fulton Center  
114 Willoughby Street  
Brooklyn, New York 11201

Bronx County, Tremont Center  
1916 Monterey Avenue  
Bronx, New York 10457

Richmond County, Richmond Center  
95 Central Avenue, St. George  
Staten Island, New York 10301

*For further information and to review and comment, please contact:*  
Department of Health, Division of Finance and Rate Setting, 99  
Washington Ave., One Commerce Plaza, Suite 1432, Albany, NY  
12210, e-mail: spa\_inquiries@health.ny.gov

## PUBLIC NOTICE

### Office of Mental Health and Department of Health

Pursuant to 42 CFR Section 447.205, the Office of Mental Health and the Department of Health hereby give public notice of the following:

The Office of Mental Health and the Department of Health propose to amend the Title XIX (Medicaid) State Plan for institutional services related to temporary rate adjustments to Article 28 Hospitals that are undergoing a closure, merger, consolidation, acquisition or restructuring of themselves or other health care providers. These payments are currently authorized by Section 2826 of the New York Public Health Law. The following changes are proposed:

Additional temporary rate adjustments have been reviewed and approved for the following hospitals:

- Claxton-Hepburn Medical Center

The aggregate payment amounts total up to \$250,000 for the period January 1, 2020 through March 31, 2020.

The aggregate payment amounts total up to \$1,000,000 for the period April 1, 2020 through March 31, 2021.

The aggregate payment amounts total up to \$1,000,000 for the period April 1, 2021 through March 31, 2022.

The aggregate payment amounts total up to \$750,000 for the period April 1, 2022 through March 31, 2023.

The public is invited to review and comment on this proposed State Plan Amendment. Copies of which will be available for public review on the Department of Health's website at: [http://www.health.ny.gov/regulations/state\\_plans/status](http://www.health.ny.gov/regulations/state_plans/status)

Copies of the proposed State Plan Amendments will be on file in each local (county) social services district and available for public review.

For the New York City district, copies will also be available at the following places:

New York County  
250 Church Street  
New York, New York 10018

Queens County, Queens Center  
3220 Northern Boulevard  
Long Island City, New York 11101

Kings County, Fulton Center  
114 Willoughby Street  
Brooklyn, New York 11201

Bronx County, Tremont Center  
1916 Monterey Avenue  
Bronx, New York 10457

Richmond County, Richmond Center  
95 Central Avenue, St. George  
Staten Island, New York 10301

*For further information and to review and comment, please contact:*  
Department of Health, Division of Finance and Rate Setting, 99  
Washington Ave., One Commerce Plaza, Suite 1460, Albany, NY  
12210, e-mail: spa\_inquiries@health.ny.gov

## PUBLIC NOTICE

### New York State Energy Planning Board

Pursuant to New York Energy Law, Article 6, the New York State Energy Planning Board ("Board") hereby gives notice of the following opportunity to submit public comments on a proposed amendment to the 2015 State Energy Plan. Comments will be received for 60 days at: [www.energyplan.ny.gov/comment](http://www.energyplan.ny.gov/comment)

Section 6-106(6) of New York State Energy Law states that the Board may amend the Plan upon a finding that there has been a material and substantial change in fact or circumstance. Upon completion and consideration of public comments, the Board shall reconvene to advance any resolution concerning amendment of the Plan. As the Climate Leadership and Community Protection Act (CLCPA) has established clean energy and greenhouse gas reductions targets, and their codification into law thereof, this represents a substantial change in circumstance since the issuance of the Plan. As such, the Board is advancing a Draft Amendment to the 2015 State Energy Plan. These changes also provide additional reason to assist legacy generation host communities transition and adapt to a clean energy economy. To reflect these changes, and to ensure that agency activities are informed by synchronized statutory and State Energy Plan directions, this Draft Amendment is presented by the Board for commencement of an Energy Plan amendment process.

#### Draft Amendment

Volume I, page 110 is revised to read:

#### Clean Energy Goals

In 2019, Governor Andrew M. Cuomo introduced a Green New Deal (GND) and signed into law the Climate Leadership and Community Protection Act (CLCPA), both of which place New York on a path toward carbon neutrality. The CLCPA establishes 100% carbon free electricity by 2040, the most aggressive goal in the nation. To support this goal, the CLCPA increased the State's renewable electricity goal from 50% to 70% by 2030. These and other provisions of the CLCPA will support a Statewide greenhouse gas emissions goal of 85% from 1990 levels by 2050.

The CLCPA establishes the clean energy goals listed below. Advancement of these goals will be subject to further refinement, deliberation, and decision making, as follows:

- the Climate Action Council is required to finalize a Scoping Plan for implementation of the CLCPA within three years,
- the Public Service Commission is directed to implement the clean energy program and technology goals stipulated in the CLCPA, and
- the Department of Environmental Conservation is directed to establish emission reduction requirements across various activities in the State, including energy facilities, to ensure achievement of the CLCPA's Statewide greenhouse gas emission limits.

The CLCPA requires, in Section 7(2), all state agencies to consider whether their decisions regarding permits, licenses and other approvals are inconsistent with or interfere with achieving the CLCPA's

statewide greenhouse gas limits and, if so, identify alternatives or greenhouse gas mitigation to be required.

The CLCPA further establishes a requirement for all State agencies that 35% of the benefits from clean energy and energy efficiency investments be realized by disadvantaged communities, with a goal that 40% of the benefits from investments, including energy, transportation, workforce development, housing, low-income energy assistance, economic development, and pollution reduction, accrue to these communities. Criteria to identify disadvantaged communities shall be provided through the Climate Action Council process, as informed by the Climate Justice Working Group.

Further direction may also be provided through the Climate Action Council Scoping Plan process, such as recommendations from the Just Transition Working Group as well as the advisory panels established by the CLCPA. The Scoping Plan must evaluate technology and policy pathways across all sectors of the economy, including the energy sector, in order to identify the actions New York can take to meet the stated outcomes. The final Scoping Plan, as well as required updates over time, will inform future policies and programming, including future State Energy Plans.

Volume I, page 111 is revised to read:

New York's Clean Energy and Climate Targets

85% reduction in GHG emissions by 2050: Reducing GHG emissions by no less than this amount on an economy-wide basis—power generation, industry, buildings, transportation, forestry, and waste—is critical to ensuring society's sustainability and well-being.

40% reduction in GHG emissions by 2030: Reducing GHG emissions by no less than this amount on an economy-wide basis is critical for placing the State on a path toward the 85% emissions reduction goal, and signaling to clean energy industries that New York intends to place itself at the forefront of clean energy market growth.

100% carbon free electricity by 2040: Decarbonizing the electric grid will support greenhouse gas reductions in the power generation sector directly, as well as facilitate decarbonization of other sources of emissions, like the transportation sector and buildings that will increase reliance on electricity as a primary low- or zero-carbon energy input.

70% electricity generation from renewable energy resources by 2030: Renewable energy resources, including solar, wind, and hydropower, will play a vital role in reducing electricity price volatility and curbing greenhouse gas emissions.

9,000 MW of offshore wind by 2035: Offshore wind will play a leading role in reaching the 70% renewable energy goal—injecting local clean energy in areas of high demand—and fully decarbonizing the electricity grid by 2040.

3,000 MW of energy storage by 2030: Energy storage resources can support integration of renewable generation such as wind and solar, reduce the need for conventional fossil-fueled peaking power plants, and improve electric system and customer-based resilience.

185 trillion BTU increase in on-site energy savings by 2025: Energy efficiency reduces demand for electricity resulting in lower energy bills. Achieving at least 185 trillion British thermal units (BTU) in reductions by 2025 from a 2015 baseline will achieve the previously established energy efficiency goals five years earlier and deliver nearly one-third of the emissions reductions needed to meet 40x30.

40% goal, and a minimum target of 35%, of overall benefits from investments realized by disadvantaged communities: The overall benefits of spending on clean energy and energy efficiency programs, projects, or investments in the areas of housing, workforce development, pollution reduction, low-income energy assistance, energy, transportation, and economic development, should be realized by disadvantaged communities.

Volume 1, on page 97 in the Energy Infrastructure Modernization section, insert the following new Initiative:

Establish a Sustainable Electric Generation Facility Cessation Mitigation Program 44. New York's electric generation fleet is and will undergo a transition in the coming years as a result of market forces, State policies, and the advent of the CLCPA. In 2016, the Public Service Commission initiated the Clean Energy Standard and adopted the

goal of 50% renewable electricity by 2030, which has been increased to 70% through the CLCPA. Also, in 2016, Governor Cuomo committed to eliminate all coal generation in New York State by 2020 and following the adoption of regulations by the Department of Environmental Conservation, the State's remaining coal-fired power plants have announced plans to shut down. In addition to the above policies, nuclear power plant owner Entergy announced its intention to close each of the operating units of the Indian Point nuclear power plant by 2020 and 2021 respectively. The CLCPA has further committed the State to a zero-carbon electricity sector by 2040.

Power plant host communities are able to receive transitional support to alleviate financial losses associated with a generator's retirement through the State's Electric Generation Facility Cessation Mitigation Program (Mitigation Program). The Mitigation Program, established in 2015, is not currently being implemented in accordance with the policy changes that were instituted after the program was initially established. To account for the changes in energy policy since the onset of the Mitigation Program, the Public Service Commission will develop a process to consider a mechanism that can provide a stable source of funding for the Mitigation Program.

In consideration of the CLCPA goal of a carbon neutral economy, State entities should initiate, to the extent practicable, policies and programs in a manner designed to advance careful planning for the transitions of energy systems that both meet customer expectations with a balance of supply and demand resources and maintaining safe and adequate service at reasonable costs, while accomplishing necessary reductions in greenhouse gas emissions. State entities should advance development of near-term and long-term strategies for achieving this transition in an orderly manner that promotes long-term economic growth, mitigates financial impacts to local governments, and delivers clean energy at low cost to consumers.

For further information, contact: John Williams, c/o NYSERDA, 17 Columbia Circle, Albany, NY 12203, (518) 862-1090, ext. 3333, e-mail: John.Williams@nyserd.ny.gov

## PUBLIC NOTICE

Department of State  
F-2019-1069

Date of Issuance – December 24, 2019

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act (CZMA) of 1972, as amended.

The applicant has certified that the proposed activities comply with and will be conducted in a manner consistent with the federally approved New York State Coastal Management Program (NYSCMP). The applicant's consistency certification and accompanying public information and data are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

In F-2019-1069, The New York State Office of Parks, Recreation and Historic Preservation are proposing the construction of a new 140 vessel marina basin at Nissequogue River State Park Marina. The project is located along the Nissequogue River on the site of the old Kings Park Psychiatric Center.

The applicant's consistency certification and supporting information are available for review at: <http://www.dos.ny.gov/opd/programs/pdfs/Consistency/F-2019-1069NYSOPRHP.pdf>

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice or January 23, 2020.

Comments should be addressed to: Department of State, Office of Planning and Development and Community Infrastructure, Consistency Review Unit, One Commerce Plaza, Suite 1010, 99 Washington Ave., Albany, NY 12231, (518) 474-6000. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

**PUBLIC NOTICE**

Department of State  
F-2019-1070

Date of Issuance – December 24, 2019

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act (CZMA) of 1972, as amended.

The applicant has certified that the proposed activities comply with and will be conducted in a manner consistent with the federally approved New York State Coastal Management Program (NYSCMP). The applicant's consistency certification and accompanying public information and data are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

In F-2019-1070, Robert Greenwood is proposing to remove and replacement 112 linear feet of existing bulkhead, in-place. Maintain a 80 x 5-ft fixed pier. Remove 14 x 9-ft pier head. Construct a 70 x 5-ft fixed "L" shaped pier extension, 24 x 20-ft 8-pile lift, a 18 x 18-ft 4-pile lift, a 12.5 x 12-ft 2-pile personal watercraft lift, (2) 12 x 6-ft personal watercraft floating dock, 12 x 8-ft floating dock and a 45 linear feet wavescreen. The project is located at 340 Riviera Drive South, Massapequa, NY 11758 on Massapequa Cove.

The applicant's consistency certification and supporting information are available for review at: <http://www.dos.ny.gov/opd/programs/pdfs/Consistency/F-2019-1070Greenwood.pdf>

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice or January 23, 2020.

Comments should be addressed to: Department of State, Office of Planning and Development and Community Infrastructure, Consistency Review Unit, One Commerce Plaza, Suite 1010, 99 Washington Ave., Albany, NY 12231, (518) 474-6000. Electronic submissions can be made by email at: [CR@dos.ny.gov](mailto:CR@dos.ny.gov)

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

**PUBLIC NOTICE**

Department of State  
Uniform Code Variance / Appeal Petitions

Pursuant to 19 NYCRR Part 1205, the variance and appeal petitions below have been received by the Department of State. Unless otherwise indicated, they involve requests for relief from provisions of the New York State Uniform Fire Prevention and Building Code. Persons wishing to review any petitions, provide comments, or receive actual notices of any subsequent proceeding may contact Brian Tollisen or Neil Collier, Building Standards and Codes, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-4073 to make appropriate arrangements.

2019-0714 Matter of JMK Architectural Services, P.C., John J. Viscardi, Five Todd Court, East Williston, NY 11596, for a variance concerning safety requirements, including the required heights under a girder/soffit. Involved is an existing one family dwelling located at 177 Edward Court; Town of Hempstead, NY 11552 County of Nassau, State of New York.

2019-0715 Matter of Al-Fattah Contractor, Inc., Sheikh Naim, 14 Ridgefield Drive, Shoreham, NY 11786, for a variance concerning safety requirements, including the required heights under a girder/soffit. Involved is an existing one family dwelling located at 51 Newton Avenue; Town of Brookhaven, NY 11784 County of Suffolk, State of New York.

2019-0718 Matter of Nassau Expeditors Inc., Scott Tirone, 75 Albertson Avenue, Albertson, NY 11507, for a variance concerning safety requirements, including the required ceiling height and required heights under a girder/soffit. Involved is an existing one family dwelling located at 112 Dogwood Road; Town of North Hempstead, NY 11576 County of Nassau, State of New York.

**PUBLIC NOTICE**

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2019-0728 In the matter of O'Brien & Gere Engineers, Inc., Colin Lautz, 333 West Washington Stret, Syracuse, NY 13202 for Oneida County Department of Water for an appeal and variance concerning building code and fire safety requirements including the installation of domestic cooking appliances and range hoods in a commercial building.

Involved are the alterations of an existing two story office occupancy, located at 51 Leland Avenue, City of Utica, County of Oneida, New York.

**PUBLIC NOTICE**

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Uniform Code Variance / Appeal Petitions

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2019-0733 In the matter of PJ Apartments, Patrick Corbett, P.O. Box 218, Ithaca, NY 14851, concerning safety requirements including a variance for reduction in required height of existing interior stair handrails and guardrails.

Involved is the certificate of compliance inspection of an existing residential occupancy, three stories in height, located at 614 East Buffalo Street, City of Ithaca, County of Tompkins, New York.

2019-0734 In the matter of PJ Apartments, Patrick Corbett, P.O. Box 218, Ithaca, NY 14851, concerning safety requirements including a variance for reduction in required height of existing interior front porch handrails and guardrails.

Involved is the certificate of compliance inspection of an existing residential occupancy, three stories in height, located at 715 East Buffalo Street, City of Ithaca, County of Tompkins, New York.

# EXECUTIVE ORDERS

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**Executive Order No. 197.2: Continuing the Declaration of a Disaster in the Counties of Cayuga, Chautauqua, Cortland, Dutchess, Erie, Essex, Hamilton, Herkimer, Jefferson, Montgomery, Oneida, Saratoga, Warren, and Contiguous Counties.**

WHEREAS, pursuant to Executive Order Nos. 197 and 197.1, a disaster has heretofore been declared in the counties of Cayuga, Chautauqua, Cortland, Dutchess, Erie, Essex, Hamilton, Herkimer, Jefferson, Montgomery, Oneida, Saratoga, Warren, and contiguous counties due to damaging winds, torrential rainfall, and flooding; and

WHEREAS, the winds and flooding have caused significant damage to homes, residential structures, businesses, as well as public infrastructure throughout the affected counties, and the State's assistance continues to be needed.

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution of the State of New York and Section 28 of Article 2-B of the Executive Law, after having considered the relevant facts and circumstances, do hereby extend all the terms, conditions and directives of Executive Order Nos. 197 and 197.1, effective December 1 until December 30, 2019.

(L.S.)

GIVEN under my hand and the Privy Seal of the State in the City of Albany this twenty sixth day of November in the year two thousand nineteen.

*BY THE GOVERNOR*

*/s/ Andrew M. Cuomo*

*/s/ Melissa DeRosa*

*Secretary to the Governor*

**Executive Order No. 199: Declaring a Disaster in the Counties of Albany, Columbia, Greene, Rensselaer, Schenectady, Saratoga, and Ulster, and Contiguous Counties.**

WHEREAS, on December 1, 2019, and continuing thereafter, a severe winter storm began to impact New York State, posing an imminent danger to vital public transportation, utility service, public health, and public safety systems within the counties of Albany, Columbia, Greene, Rensselaer, Schenectady, Saratoga, and Ulster, and contiguous counties; and

WHEREAS, this winter storm is anticipated to produce snowfall amounts of up to 24 inches, at a rate of up to one to two inches per hour, with ice and sleet. These conditions may cause widespread power outages and road closures, travel disruptions, and damage to public and private property throughout the impacted areas and will pose a threat to public health and safety.

NOW, THEREFORE, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by the Constitution of the State of New York and Section 28 of Article 2-B of the Executive Law, do hereby find that a disaster is imminent for which the affected local governments are unable to respond adequately. Therefore, I hereby declare a State Disaster Emergency effective December 2, 2019 within the territorial boundaries of the counties of Albany, Columbia, Greene, Rensselaer, Schenectady, Saratoga, and Ulster, and contiguous counties. This Executive Order shall be in effect until December 9, 2019; and

FURTHER, pursuant to Section 29 of Article 2-B of the Executive Law, I direct the implementation of the State Comprehensive Emergency Management Plan and authorize, effective December 2, 2019, the State Office of Emergency Management, the Department of Health, the Department of Transportation, the Division of State Police, the Division of Military and Naval Affairs, the Department of Environmental Conservation, the Department of Corrections and Community Supervision, the Public Service Commission, the Office of Fire Prevention and Control, the Department of Labor, the Office of Parks, Recreation and Historic Preservation, the Office of General Services, the Thruway Authority, the Division of Homeland Security and Emergency Services, other State agencies as necessary, and the American Red Cross to take appropriate action to protect State property and to assist affected local governments and individuals in responding to and recovering from this disaster, and to provide such other assistance as necessary to protect the public health and safety.

IN ADDITION, this declaration satisfies the requirements of 49 C.F.R. 390.23(a)(1)(A), which provides relief from Parts 390 through 399 of the Federal Motor Carrier Safety Regulations (FMCSR). Such relief from the FMCSR is necessary to ensure that crews can clear vital roadways and hasten the movement of utility power restoration crews into New York State.

FURTHER, I, ANDREW M. CUOMO, Governor of the State of New York, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend specific provisions of any statute, local law, ordinance, orders, rules or regulations, or parts thereof, of any agency during a State disaster emergency, if compliance with such provisions would prevent, hinder or delay action necessary to cope with the disaster, hereby temporarily suspend, for the period from the date of this Executive Order through December 9, 2019, the following laws:

Section 38(1), (2) and (3) of the Highway Law and Article 4-C of the Economic Development Law, to the extent necessary to authorize the award of emergency contracts and/or to combine design and construction services in contracts and to use such services when needed;

Section 97-G of the State Finance Law, to the extent necessary to purchase food, supplies, services, and equipment or furnish or provide various centralized services, including but not limited to, building design and construction services to assist affected local governments, individuals, and other non-State entities in responding to and recovering from the disaster emergency;

Section 112 of the State Finance Law, to the extent consistent with Article V, Section I of the State Constitution, and to the extent necessary to add additional work, sites and time to State contracts, to award emergency contracts or award leases for relocation and support of State operations under Public Buildings Law Section 3, to award emergency contracts under Public Buildings Law Section 9, to award emergency contracts for professional services under Section 136-a of the State Finance Law and to award emergency contracts for commodities, services, technology, and materials pursuant to Section 163 of the State Finance Law;

Section 136-a of the State Finance Law, to the extent necessary to combine design and construction services in one contract and/or to obtain design and construction inspection services;

Section 359-a and Section 2879 of the Public Authorities Law to the extent necessary to purchase necessary goods and services without following the standard procurement processes;

Sections 375, 385 and 401 of the Vehicle and Traffic Law, to the extent that exemption for vehicles validly registered in other jurisdictions from the vehicle registration, equipment and dimension requirements is necessary to assist in disaster preparedness and recovery efforts;

Part F of Chapter 60 of the Laws of 2015, and Chapter 59 of 2017 to the extent necessary to award design-build and best value contracts without following the proscribed procurement process; and

Article 8 of the Environmental Conservation Law, and Part 15 of Title 17 and Part 617 of Title 6 of the New York Code of Rules and Regulations, to the extent that the Commissioner of Transportation, the Commissioner of General Services, or the Commissioner of the Division of Homeland Security and Emergency Services determines that work is immediately necessary for the replacement, rehabilitation, or reconstruction of structures.

FURTHER, I hereby temporarily modify, for the period from the date of this Executive Order through December 9, 2019, the following laws:

Section 24 of the Executive Law; Sections 104 and 346 of the Highway Law; Sections 1602, 1630, 1640, 1650, and 1660 of the Vehicle and Traffic Law; Section 14(16) of the Transportation Law; Sections 6-602 and 17-1706 of the Village Law; Section 20(32) of the General City Law; Section 91 of Second Class Cities Law; Section 19-107(ii) of the New York City Administrative Code; and Section 107.1 of Title 21 of the New York Codes, Rules and Regulations, to the extent necessary to provide the Governor with the authority to regulate traffic and the movement of vehicles on roads, highways, and streets.

(L.S.)

GIVEN under my hand and the Privy Seal of the State in the City of Albany this second day of December in the year two thousand nineteen.

*BY THE GOVERNOR*

*/S/ Andrew M. Cuomo*

*/s/ Melissa DeRosa*

*Secretary to the Governor*