





TO: The Honorable the Members of the Board of Regents

FROM: James N. Baldwin 

SUBJECT: Proposed Amendment of Section 100.5 of the Regulations of the Commissioner of Education Relating to the January 2022 Administration of Regents Examinations

DATE: March 3, 2022

AUTHORIZATION(S): 

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 100.5 of the Regulations of the Commissioner of Education relating to the January 2022 administration of Regents examinations?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is presented to the Full Board for adoption as an emergency rule at its March 2022 meeting. A copy of the proposed rule is included as Attachment A and a statement of facts and circumstances justifying emergency action is included as Attachment B.

Procedural History

The proposed amendment was presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at the January 2022 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on January 26, 2022, for a 60-day public comment period.

Because the January emergency action will expire on April 10, 2022, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the May 2022 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on April 27, 2022. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

The COVID-19 pandemic has resulted in the limited administration of Regents examinations since spring 2020. In response, the Department has adopted regulatory amendments exempting students from the diploma, credential, and endorsement requirements related to the passing of such examinations. The Department also adopted regulatory amendments to provide parents and persons in parental relation of eligible students the opportunity to decline such an exemption.

Due to the widespread cases of COVID -19 during the current school year, many students have been unable to attend class in person due to quarantine guidelines. Additionally, many school districts were forced to shift to fully remote instruction due to high rates of positive COVID-19 cases in their buildings. Therefore, the Department canceled the January 2022 administration of Regents examinations. These examinations could not be safely, equitably, and fairly administered across the State.

To ensure that the cancellation of these examinations does not adversely impact students, the Department now proposes additional regulatory amendments to section 100.5(a) of the Commissioner's regulations to provide an exemption to the diploma, credential, and endorsement requirements related to the passing of January 2022 Regents examinations. This amendment will ensure that students may still meet such requirements.

Additionally, the Department is proposing to amend section 100.5(a) of the Commissioner's regulations to extend the exemption declination. This amendment will permit parents and persons in parental relation to decline the exemption to the graduation assessment requirement(s) for any year that their child has been exempted prior to such child's graduation. Schools must notify parents and persons in parental relation of the option to decline such exemption prior to the conclusion of the semester in which students are due to receive their high school diploma (10 days prior for those graduating after the first semester of the 2021-22 school year and 30 days prior to the second semester of the 2021-22 school year and thereafter).

Related Regents Items

September 2020: [Proposed Amendments to Sections 60.10, 80-1.2, 80-4.3, 804.4, 80-5.6, 100.2, 100.5, 100.7, 100.10, 110.4, 119.4, 121.5, 135.4, 145-2.15 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/920brca3.pdf)

(<https://www.regents.nysed.gov/common/regents/files/920brca3.pdf>)

April 2021: [Proposed Amendments to Sections 155.17\(f\) and 100.5\(a\) of the Regulations of the Commissioner of Education and Section 30-3.16 of the Rules of the Board of Regents Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/4211brca9.pdf)
(<https://www.regents.nysed.gov/common/regents/files/4211brca9.pdf>)

December 2021: [Proposed Amendment to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and the addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/1221brca4.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1221brca4.pdf>)

January 2022: [Proposed Amendment to Section 100.5 of the Regulations of the Commissioner of Education Relating to the January 2022 Administration of Regents Examinations](https://www.regents.nysed.gov/common/regents/files/122p12a2.pdf)
(<https://www.regents.nysed.gov/common/regents/files/122p12a2.pdf>)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That section 100.5(a) of the Regulations of the Commissioner of Education be amended, as submitted, effective April 11, 2022, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare and public health to immediately provide regulatory flexibility in response to the cancellation of the January 2022 Regents examination administration due to the COVID-19 crisis so that students can still meet the diploma, credential, and endorsement requirements related to the passing of such examinations and to ensure that the emergency action taken at the January 2022 Regents meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the March 2022 Regents meeting, the emergency rule will become effective April 11, 2022. It is anticipated that the proposed amendment will be presented for permanent adoption at the May 2022 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 May 2022 meeting, the proposed amendment will become effective as a permanent rule on June 1, 2022.

Attachment A

AMENDMENT TO THE REGULATIONS FO THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 209, 305, 3204, and 3205 of the Education Law.

1. Subclause (4) of clause (a) subparagraph (vi) of paragraph (5) of subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(4) For purposes of meeting the diploma requirements of this subdivision, students deemed to have demonstrated attainment of the applicable New York learning standards in English, mathematics, science, United States history and government, and global history and geography shall be exempt from the applicable Regents examination requirements for the January 2022 Regents examination administration if such students:

(i) were enrolled in a course of study that would ordinarily culminate in the taking of [the]a January 2022 Regents [Examination in United States History and Government (Framework)] examination and earn credit for such course of study by the end of the first semester of the 2021-22 school year;

(ii) were enrolled in a course of study in grade 7 or grade 8 that would ordinarily culminate in the taking of a January 2022 Regents examination, and have met the learning standards in such course of study;

(iii) successfully completed a make-up program for the purpose of earning course credit [in a course that would ordinarily culminate in the taking of the Regents Examination in United States History and Government (Framework)] between September 1, 2021 and the end of the first semester of the 2021-22 school year;[or

(iii)] (iv) were preparing to take [the] a required Regents [Examination in United States History and Government (Framework)] examination in order to graduate at the end of the first semester of the 2021-22 school year; or

(v) transferred to a New York State high school from either a high school located outside of New York State or from another New York State high school in which Regents examinations were not administered, and earned credit in a course for which they intended to take a corresponding Regents examination in January 2022.

2. Subparagraph (viii) of paragraph (5) of subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(viii)(a) Notwithstanding subparagraph (vii) of this paragraph, no entry shall be recorded on the transcript or permanent record of a student in the event that a parent or person in a parental relation declines the exemption to the graduation assessment requirement(s) in accordance with clause (b) of this subparagraph.

(b) For the 2019-20 school year and the first semester of the 2021-22 school year, at least 10 calendar days and for the 2020-21 and second semester of the 2021-22 school [year] years and thereafter, at least 30 calendar days prior to the date on a which a student shall receive a high school diploma, the superintendent, or school principal of a charter school, or chief administrative officer of a registered nonpublic high school shall send notification by letter and also by email and text, if available, to the parents or persons in parental relation of all students scheduled to graduate [in June or August of 2020 or January, June or August of 2021] who have been exempted from a graduation assessment requirement pursuant to this section or paragraph (10) of subdivision (d) of section 100.6 of this title. Such notification shall be sent in English and

translated, when appropriate, into the recipient's native language or mode of communication.

(c) ...

(d) ...

(e) ...

(f) ...

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTON

The COVID-19 pandemic has resulted in the limited administration of Regents examinations since spring 2020. In response, the Department has adopted regulatory amendments exempting students from the diploma, credential, and endorsement requirements related to the passing of such examinations. The Department also adopted regulatory amendments to provide parents and persons in parental relation of eligible students the opportunity to decline such an exemption.

Due to the widespread cases of COVID -19 during the current school year, many students have been unable to attend class in person due to quarantine guidelines. Additionally, many school districts have shifted to fully remote instruction due to high rates of positive COVID-19 cases in their buildings. Therefore, the Department has canceled the January 2022 administration of Regents examinations. These examinations could not be safely, equitably, and fairly administered across the State.

To ensure that the cancellation of these examinations does not adversely impact students, the Department now proposes additional regulatory amendments to section 100.5(a) of the Commissioner's regulations to provide an exemption to the diploma, credential, and endorsement requirements related to the passing of January 2022 Regents examinations. This amendment will ensure that students may still meet such requirements.

Additionally, the Department is proposing to amend section 100.5(a) of the Commissioner's regulations to extend the exemption declination. This amendment will permit parents and persons in parental relation to decline the exemption to the

graduation assessment requirement(s) for any year that their child has been exempted prior to such child's graduation. Schools must notify parents and persons in parental relation of the option to decline such exemption prior to the conclusion of the semester in which students are due to receive their high school diploma (10 days prior for those graduating after the first semester of the 2021-22 school year and 30 days prior to the second semester of the 2021-22 school year and thereafter).

The proposed amendment was presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at the January 2022 meeting of the Board of Regents, effective January 11, 2022. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the May 2022 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earlier effective date of the proposed rule, if adopted at the May 2022 meeting, would be June 1, 2022, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire April 10, 2022. Therefore, a second emergency action is necessary at the March 2022 meeting for the preservation of the general welfare and public health in order to immediately provide regulatory flexibility in response to the cancellation of the January 2022 Regents examination administration due to the COVID-19 crisis, so that students can still meet the diploma, credential, and endorsement requirements related to the passing of such examinations and to ensure that the emergency action taken at the January 2022 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the May 2022 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule making.