




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents
FROM: Ken Slentz 
SUBJECT: Proposed amendment of sections 100.4(d)(4), 100.4(e)(4) and 100.18(b)(14) of the Commissioner's Regulations, regarding administration of Regents Examinations and Assessments in Science to Students in Grades 7 and 8
DATE: May 12, 2014
AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Regents adopt as a second emergency action the proposed amendment of sections 100.4 and 100.18 of the Commissioner's Regulations, to make a technical change for purposes of clarifying the administration of Regents examinations and assessments in science to students in grades 7 and 8?

Reason for Consideration

Review of policy.

Proposed Handling

The proposed amendment will be presented to the Full Board at the May 2014 Regents meeting for adoption as a second emergency action. A statement of the facts and circumstances which necessitate emergency action is attached.

Procedural History

The proposed amendment was adopted as an emergency action at the March 2014 Regents meeting, effective March 11, 2014. A Notice of Emergency Adoption and

Proposed Rule Making was published in the State Register on March 26, 2014. The March emergency rule will expire on June 8, 2014. A second emergency action is necessary at the May Regents meeting in order to ensure that the emergency rule remains continuously in effect until it can be adopted as a permanent rule at the June 2014 Regents meeting. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Section 100.4(e) (4) currently provides that the science intermediate assessment shall be administered in grade 8. However, some grade 7 and 8 students receive Regents-level instruction in science and take Regents examinations in science. The proposed amendment to section 100.4(e)(4) would enact a technical change to clarify that students attending grade 8 may take a Regents examination in science in lieu of or in addition to the grade 8 science intermediate assessment. The proposed rule also provides that the science intermediate assessment shall not be administered in grade 8 to students who take such assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment would thereby provide a means to relieve students, teachers, and schools from having to prepare for multiple end-of-year assessments for students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science.

The proposed amendment to 100.18(b)(14) clarifies how student results on grade 8 science assessments, including Regents examinations, will be used for institutional accountability purposes, as follows:

- For students who, while attending grade 8, take a Regents examination in science but do not take the grade 8 science intermediate assessment, participation and accountability determinations for the school in which such student attends grade 8 shall be based upon such student's performance on the Regents examination in science.
- For students who, while attending grade 8, take both the grade 8 science intermediate assessment and a Regents examination in science, participation and accountability determinations for the school in which such student attends grade 8 shall be based upon such student's performance on the grade 8 science intermediate assessment.
- For students who have taken the grade 8 science intermediate assessment when they attended grade 7 and who take a Regents examination in science while attending grade 8, participation and accountability determinations for the school in which such student attends grade 8 shall be based upon such student's performance on the Regents examination in science.

- For students who have taken the grade 8 science intermediate assessment when they attended grade 7 and who do not take a Regents examination in science while attending grade 8, participation and accountability determinations for the school in which the student attends grade 8 shall be based upon the student's performance on the grade 8 science intermediate assessment taken in grade 7.

The proposed amendment also makes a technical revision to paragraph (4) of subdivision (d) of section 100.4 to correct a citation.

Recommendation

Staff recommends that the Board of Regents take the following action:

VOTED: That paragraph (4) of subdivision (d) of section 100.4, paragraph (4) of subdivision (e) of section 100.4 and subparagraph (iii) of paragraph (14) of subdivision (b) of section 100.18 of the Regulations of the Commissioner of Education be amended as submitted, effective June 9, 2014, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the March 10-11, 2014 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

Timetable for Implementation

The proposed amendment was adopted as an emergency rule at the March 2014 Regents meeting, effective March 11, 2014, and will expire on June 8, 2014. If adopted at the May Regents meeting, the second emergency action will take effect on June 9, 2014. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the June Regents meeting, after expiration of the 45-day public comment period for proposed rule makings.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 208, 209, 210, 215, 305, 308, 309, and 3204

1. Paragraph (4) of subdivision (d) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective June 9, 2014, as follows:

(4) Courses taken pursuant to this subdivision may be substituted for the appropriate requirements set forth in subdivision [(b)] (c) of this section.

2. Paragraph (4) of subdivision (e) of section 100.4 of the Regulations of the Commissioner of Education is amended, effective June 9, 2014, as follows:

(e) Required assessments in grades seven and eight. Except as otherwise provided in subdivisions (f) and (g) of this section, and except for students who have been admitted to a higher grade without completing the grade at which the assessment is administered, all students shall take the following assessments, provided that testing accommodations may be used as provided for in section 100.2(g) of this Part in accordance with department policy.

(1) . . .

(2) . . .

(3) . . .

(4) Beginning with the school year 2000-2001, the science intermediate assessment shall be administered in grade eight; provided that students who attend grade eight may take a Regents examination in science in lieu of or in addition to the grade eight science intermediate assessment, in accordance with this section and section 100.18(b)(14) of this Part, and provided further that the science intermediate

assessment shall not be administered in grade eight to students who take such assessment in grade seven and are being considered for placement in an accelerated high school-level science course when they are in grade eight pursuant to subdivision (d) of this section.

(5) . . .

3. Subparagraph (iii) of paragraph (14) of subdivision (b) of section 100.18 of the Regulations of the Commissioner of Education is amended, effective June 9, 2014, as follows:

(iii) Notwithstanding the provisions of this section:

(a) . . .

(b) . . .

(c) Science assessments in grades 7 and 8.

(i) For students who, while attending grade 8, take a Regents examination in science but do not take the grade 8 science intermediate assessment, participation and accountability determinations for the school in which such student attends grade 8 shall be based upon such student's performance on the Regents examination in science.

(ii) For students who, while attending grade 8, take both the grade 8 science intermediate assessment and a Regents examination in science, participation and accountability determinations for the school in which such student attends grade 8 shall be based upon such student's performance on the grade 8 science intermediate assessment.

(iii) For students who have taken the grade 8 science intermediate assessment when they attended grade 7 and who take a Regents examination in science while attending grade 8, participation and accountability determinations for the school in

which such student attends grade 8 shall be based upon such student's performance on the Regents examination in science.

(iv) For students who have taken the grade 8 science intermediate assessment when they attended grade 7 and who do not take a Regents examination in science while attending grade 8, participation and accountability determinations for the school in which the student attends grade 8 shall be based upon the student's performance on the grade 8 science intermediate assessment taken in grade 7.

8 NYCRR §§100.4(d) and (e) and 100.18

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment to section 100.4(e)(4) would enact a technical change to clarify that students attending grade 8 may take a Regents examination in science in lieu of or in addition to the grade 8 science intermediate assessment. The proposed rule also provides that the science intermediate assessment shall not be administered in grade 8 to students who take such assessment in grade 7 and are being considered for placement in an accelerated high school-level science course when they are in grade 8. The proposed amendment would thereby provide a means to relieve students, teachers, and schools from having to prepare for multiple end-of-year assessments for students in grade 8 who receive Regents-level instruction in science and take Regents examinations in science.

The proposed amendment to 100.18(b)(14) clarifies how student results on grade 8 science assessments, including Regents examinations, will be used for institutional accountability purposes.

The proposed amendment also makes a technical revision to paragraph (4) of subdivision (d) of section 100.4 to correct a citation.

The proposed amendment was adopted as an emergency action at the March 10-11, 2014 Regents meeting, effective March 11, 2014. Because the Board of Regents meets at monthly intervals, the earliest the proposed amendment could be adopted by regular action after publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on March 26, 2014 and expiration of the

45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202 would be the June 23-24, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the June meeting, would be July 9, 2014, the date a Notice of Adoption would be published in the State Register. However, the March emergency rule will expire on June 9, 2014, 90 days after its filing with the Department of State on March 11, 2014. A lapse in the rule's effective date could disrupt implementation of grade 8 intermediate science assessments during the 2013-2014 school year.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the March Regents meeting remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the June 23-24, 2014 Regents meeting, which is the first scheduled Regents meeting after publication of the proposed rule in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.