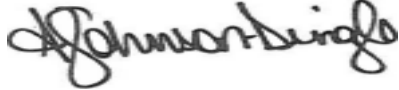





THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable Members of the Board of Regents

FROM: Angelique Johnson-Dingle 

SUBJECT: Proposed Amendment to Section 100.5(b) of the Regulations of the Commissioner of Education Relating to the Laboratory Experience Required in Order to Take a Science Regents Examination

DATE: November 3, 2022

AUTHORIZATION(S): 

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment to section 100.5(b) of the Regulations of the Commissioner of Education relating to the laboratory experience required to take a science Regents Examination?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

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

Procedural History

The proposed amendment was presented to the P-12 Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at the September 2022 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on September 28, 2022, for a 60-day public comment period.

Because the September 2022 emergency action will expire on December 11, 2022, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the January 2023 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on December 28, 2022. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

Prior to the COVID-19 pandemic, the Commissioner's regulations required that students could only take a science Regents Examination if they had completed 1,200 minutes of hands-on science laboratory experience. Only a limited group of students—those who attended educational programs administered in residential care or correctional facilities pursuant to Education Law section 112 and Part 116 or 118 of this Title—were allowed to satisfy this requirement through a combination of hands-on and simulated experience. In response to the exigencies of the COVID-19 pandemic, the Department allowed all students to satisfy the 1,200 minute requirement through a combination of hands-on and simulated experience.

Given the positive feedback from the field, the Department now proposes to make this flexibility permanent. Advances in technology and innovations in instructional methodologies, refined during the 2019-2020 and 2020-2021 school years, have made it possible to deliver high-quality simulated laboratory learning experiences to students. By making this flexibility permanent, schools and districts can increase access to science courses with laboratory components, including advanced science courses, by utilizing blended or virtual learning. In addition, this flexibility will facilitate the implementation of the New York State P-12 Science Learning Standards.

Related Regents Items

September 2022: [Proposed Amendment to Section 100.5\(b\) of the Regulations of the Commissioner of Education Relating to the Laboratory Experience Required in Order to Take a Science Regents Examination](https://www.regents.nysed.gov/common/regents/files/922p12a1revised.pdf)

(<https://www.regents.nysed.gov/common/regents/files/922p12a1revised.pdf>)

September 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/921bra4.pdf)

(<https://www.regents.nysed.gov/common/regents/files/921bra4.pdf>)

Recommendation

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

VOTED: That section 100.5(b) of the Regulations of the Commissioner of Education be amended, as submitted, effective December 12, 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 to immediately permit students to satisfy the science laboratory experience requirements to take a science Regents Examination through both hands-on and simulated experience and to ensure the emergency action taken at the September 2022 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the November 2022 Regents meeting, the emergency rule will become effective on December 12, 2022. It is anticipated that the proposed amendment will be presented for permanent adoption at the January 2023 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 2023 meeting, the proposed amendment will become effective as a permanent rule on January 25, 2023.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 209, 305, 308, 309, and 3204 of the Education Law.

Clause (d) of subparagraph (iv) of paragraph (7) of subdivision (b) of section 100.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(d) Science, three units of credit, and one of the Regents examinations in science or an approved alternative pursuant to section 100.2(f) of this Part. In order to qualify to take a Regents examination in any of the sciences, a student must complete 1,200 minutes of [actual hands-on (not simulated)] laboratory experience which may be met through any combination of hands-on and simulated laboratory experience with satisfactory documented laboratory reports[, provided that, for students who attend educational programs administered pursuant to Education Law section 112 and Part 116 or 118 of this Title, and for all students where such hands-on laboratory experience cannot be completed as a result of the COVID-19 crisis, the 1,200 minutes of laboratory experience may be met through a combination of hands-on and simulated laboratory experience]. The 1,200 minutes of laboratory experience must be in addition to the required classroom instruction associated with earning a unit of credit, provided, however, for the 2019-2020 and 2020-2021 school years, including the 2020 and 2021 summer sessions, the 1,200 minutes of laboratory experience is not required for a student to qualify to take a Regents examination where such student is unable to meet the 1,200-minute requirement due to the COVID-19 crisis and, provided further, that

1,200 minutes of laboratory experience is not required for a student to be exempted from a Regents examination pursuant to subparagraph (vi) of paragraph (5) of subdivision (a) of this section.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

Prior to the COVID-19 pandemic, the Commissioner’s regulations required that students could only take a science Regents Examination if they had completed 1,200 minutes of hands-on science laboratory experience. Only a limited group of students—those who attended educational programs administered in residential care or correctional facilities pursuant to Education Law section 112 and Part 116 or 118 of this Title—were allowed to satisfy this requirement through a combination of hands-on and simulated experience. In response to the exigencies of the COVID-19 pandemic, the Department allowed all students to satisfy the 1,200 minute requirement through a combination of hands-on and simulated experience.

Given the positive feedback from the field, the Department now proposes to make this flexibility permanent. Advances in technology and innovations in instructional methodologies, refined during the 2019-2020 and 2020-2021 school years, have made it possible to deliver high-quality laboratory learning experiences to students. By making this flexibility permanent, schools and districts can increase access to science courses with laboratory components, including advanced science courses, by utilizing blended or virtual learning. In addition, this flexibility will facilitate the implementation of the New York State P-12 Science Learning Standards.

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 September 2022 meeting of the Board of Regents, effective September 13, 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 January 2023 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the January meeting, would be January 25, 2023, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire December 11, 2022. Therefore, emergency action is necessary at the November 2022 meeting, effective December 12, 2022, for the preservation of the general welfare in order to immediately permit students to satisfy the science laboratory experience requirements to take a science Regents Examination through both hands-on and simulated experience and to ensure the emergency action taken at the September 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 January 2023 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rulemaking.