

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.

Department of Economic Development

EMERGENCY RULE MAKING

Excelsior Jobs Program

I.D. No. EDV-48-10-00010-E

Filing No. 424

Filing Date: 2011-05-09

Effective Date: 2011-05-09

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

Action taken: Addition of Parts 190-196 to Title 5 NYCRR.

Statutory authority: L. 2011, ch. 61; L. 2010, ch. 59; Economic Development Law, art. 17

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the Excelsior Jobs Program which was created by Chapter 59 of the Laws of 2010 and recently amended by Chapter 61 of the Laws of 2011. The Excelsior Jobs Program will provide job creation and investment incentives to firms that create and maintain new jobs or make significant financial investment. The Excelsior Jobs Program is one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. Recent amendment to the law extends the current benefit period from five to ten years and offers an enriched package of tax credits. It is imperative that the amended Program be implemented immediately so that New York remains competitive with other States, regions, and even

countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

This emergency rule is necessary because, in addition to establishing the application process, standards for application evaluation and procedures for businesses claiming the tax credit, it now incorporates recent statutory amendments which are designed to strengthen the Program. Immediate adoption of this rule will enable the State to begin achieving its economic development goals.

It bears noting that section 356 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations and explicitly indicates that such regulations may be adopted on an emergency basis.

Subject: Excelsior Jobs program.

Purpose: To update the provisions of the Excelsior Jobs Program per newly enacted statute.

Substance of emergency rule: The regulation creates new Parts 190-196 in 5 NYCRR as follows:

1) The regulation adds the definitions relevant to the Excelsior Jobs Program (the "Program"). Key definitions include, but are not limited to, certificate of eligibility, certificate of tax credit, industry with significant potential for private sector growth and economic development in the State, preliminary schedule of benefits, regionally significant project and significant capital investment.

2) The regulation creates the application and review process for the Excelsior Jobs Program. In order to become a participant in the Program, an applicant must submit a complete application and agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and Finance and Department of Economic Development (the "Department"); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; (c) agreeing to be permanently decertified for empire zone benefits at any location or locations that qualify for excelsior jobs program benefits if admitted into the Excelsior Jobs Program for such location or locations; (d) providing, if requested by the Department, a plan outlining the schedule for meeting job and investment requirements as well as providing its tax returns, information concerning its projected investment, an estimate of the portion of the federal research and development tax credits attributable to its research and development activities in New York state, and employer identification or social security numbers for all related persons to the applicant.

3) Applicants must also certify that they are in substantial compliance with all environmental, worker protection and local, state and federal tax laws.

4) Upon receiving a complete application, the Commissioner of the Department shall review the application to ensure it meets eligibility criteria set forth in the statute (see 5 below). If it does not, the application shall not be accepted. If it does meet the eligibility criteria, the Commissioner may admit the applicant into the Program. If admitted into the Program, an applicant will receive a certificate of eligibility and a preliminary schedule of benefits. The preliminary schedule of benefits may be amended by the Commissioner provided he or she complies with the credit caps established in General Municipal Law section 359.

5) The regulation sets forth the eligibility criteria for the Program.

The strategic industries are specifically delineated in the regulation as follows: (a) financial services data center or a financial services back office operation; (b) manufacturing; (c) software development; (d) scientific research and development; (e) agriculture; (f) back office operations in the state; (g) distribution center; or (h) in an industry with significant potential for private-sector economic growth and development in this state. Per recent statutory changes to the Program, when determining whether an applicant is operating predominantly in a strategic industry, or as a regionally significant project, the commissioner will examine the nature of the business activity at the location for the proposed project and will make eligibility determinations based on such activity. Per statutory change, participants may also begin to receive tax credits once the eligibility requirements are met and can continue to receive credits based on achieving interim milestones.

6) In addition, a business entity operating predominantly in manufacturing must create at least twenty-five net new jobs; a business entity operating predominately in agriculture must create at least ten net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must create at least one hundred net new jobs; a business entity operating predominantly in scientific research and development must create at least ten net new jobs; a business entity operating predominantly in software development must create at least ten net new jobs; a business entity creating or expanding back office operations or a distribution center in the state must create at least one hundred fifty net new jobs; a business entity must be a Regionally Significant Project; or a business entity operating predominantly in one of the industries referenced above but which does not meet the job requirements must have at least fifty full-time job equivalents, and must demonstrate that its benefit-cost ratio is at least ten to one (10:1).

7) A business entity must be in substantial compliance with all worker protection and environmental laws and regulations and may not owe past due state or local taxes. Also, the regulation explicitly excludes: a not-for-profit business entity, a business entity whose primary function is the provision of services including personal services, business services, or the provision of utilities, and a business entity engaged predominantly in the retail or entertainment industry, and a company engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity from eligibility for this program.

8) The regulation sets forth the evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) whether the Applicant is proposing to substantially renovate contaminated, abandoned or underutilized facilities; or (2) whether the Applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (3) the degree of economic distress in the area where the Applicant will locate the project identified in its application; or (4) the degree of Applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (5) the degree to which the project identified in the Application supports New York State's minority and women business enterprises; or (6) the degree to which the project identified in the Application supports the principles of Smart Growth; or (7) the estimated return on investment that the project identified in the Application will provide to the State; or (8) the overall economic impact that the project identified in the Application will have on a region, including the impact of any direct and indirect jobs that will be created; or (9) the degree to which other state or local incentive programs are available to the Applicant; or (10) the likelihood that the project identified in the Application would be located outside of New York State but for the availability of state or local incentives.

9) The regulation requires an applicant to submit evidence of achieving job and investment requirements stated in its application in order to become a participant in the Program. After such evidence is found sufficient, the Department will issue a certificate of tax credit to a participant. This certificate will specify the exact amount of the tax credit components a participant may claim and the taxable year in which the credit may be claimed.

10) A participant's increase in employment, qualified investment, or federal research and development tax credit attributable to research and development activities in New York state above its projections listed in its application shall not result in an increase in tax benefits under this article. However, if the participant's expenditures are less than the estimated amounts, the credit shall be less than the estimate.

11) The regulation next delineates the calculation of the tax credits as described in statute. Of note are the following changes made as a result of recent changes to the statute: the Excelsior Jobs Program Credit has been amended to be calculated as the product of gross wages and 6.85 percent. The Excelsior Research and Development Tax Credit has been increased from ten to fifty percent of the participant's federal research and development tax credit. The Excelsior Real Property Tax Credit is now based on the value of the property after improvements have been made. Under the amended program, a participant may claim both the Excelsior Investment Tax Credit and the investment tax credit for research and development property. In addition, the current tax benefit period for all credits has been lengthened from five years to ten years.

12) The tax credit components are refundable. If a participant fails to satisfy the eligibility criteria in any one year, it loses the ability to claim the credit for that year.

13) Pursuant to the amended statute, the regulation authorizes utilities to offer excelsior job program rates for gas or electric services to participants in the program for up to ten years.

14) The regulation requires participants to keep all relevant records for their duration of program participation plus three years.

15) The regulation requires a participant to submit a performance report annually and states that the Commissioner shall prepare a program report on a quarterly basis for posting on the Department's website.

16) The regulation calls for removal of a participant in the Program for failing to meet the application requirements or failing to meet the minimum job or investment requirements of the statute. Upon removal, a participant will be notified in writing and have the right to appeal such removal.

17) The regulation lays out the appeal process for participant's who have been removed from the Program. A participant will have thirty (30) days to appeal to the Department. An appeal officer will be appointed and shall evaluate the merits of the appeal and any response from the Department. The appeal officer will determine whether a hearing is necessary and the level of formality required. The appeal officer will prepare a report and make recommendations to the Commissioner. The Commissioner will then issue a final decision in the case.

The full text of the emergency rule is available at the Department's website at <http://www.esd.ny.gov/BusinessPrograms/Excelsior.html>.

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. EDV-48-10-00010-P, Issue of December 1, 2010. The emergency rule will expire July 7, 2011.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany, NY 12245, (518) 292-5123, email: tregan@empire.state.ny.us

Regulatory Impact Statement

STATUTORY AUTHORITY:

Chapter 59 of the Laws of 2010 established Article 17 of the Economic Development Law, creating the Excelsior Jobs Program and authorizing the Commissioner of Economic Development to adopt, on an emergency basis, rules and regulations governing the Program. Chapter 61 of the Laws of 2011 recently amended the statute to strengthen the Program.

LEGISLATIVE OBJECTIVES:

The emergency rulemaking accords with the public policy objectives the Legislature sought to advance because they directly address the legislative findings and declarations that New York State needs, as a matter of public policy, to create competitive financial incentives for businesses to create jobs and invest in the new economy. The Excelsior

Jobs Program is created to support the growth of the State's traditional economic pillars including the manufacturing and financial industries and to ensure that New York emerges as the leader in the knowledge, technology and innovation based economy. The Program will encourage the expansion in and relocation to New York of businesses in growth industries such as clean-tech, broadband, information systems, renewable energy and biotechnology.

The emergency rule is specifically authorized by the Legislature.

NEEDS AND BENEFITS:

The emergency rule is required in order to immediately implement the statute contained in Article 17 of the Economic Development Law, creating and recently amending the Excelsior Jobs Program. The statute directed the Commissioner of Economic Development to adopt regulations with respect to an application process and eligibility criteria and authorized the adoption of such regulations on an emergency basis notwithstanding any provisions to the contrary in the state administrative procedures act.

New York is in the midst of a national economic slowdown. The impact of the national financial crisis and resulting slowed economic growth was particularly devastating to New York State and is having severe consequences on New York's immediate fiscal health and could harm its economic future.

The Excelsior Jobs Program will be one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. It is imperative that this Program be implemented immediately so that New York remains competitive with other States, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

This rule will establish the process and procedures for launching this new Program in the most efficient and cost-effective manner while protecting all New York State taxpayers with rules to ensure accountability, performance and adherence to commitments by businesses choosing to participate in the Program. The rule implements the amendments to the statute which extend the current tax benefit period from five to ten years and offer an enriched package of tax credits.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Excelsior Jobs Program, only voluntary participants.

B. Costs to the agency, the State, and local governments: The Department of Economic Development does not anticipate any significant costs with respect to implementation of this program. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. There are no mandates on local governments with respect to the Excelsior Jobs Program. This emergency rule does not impose any costs to local governments for administration of the Excelsior Jobs Program.

PAPERWORK:

The emergency rule requires businesses choosing to participate in the Excelsior Jobs Program to establish and maintain complete and accurate books relating to their participation in the Excelsior Jobs Program for a period of three years beyond their participation in the Program. However, this requirement does not impose significant additional paperwork burdens on businesses choosing to participate in the Program but instead simply requires that information currently established and maintained be shared with the Department in order to verify that the business has met its job creation and investment commitments.

DUPLICATION:

The emergency rule does not duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the

regulations in response to statutory revisions. The Department conducted outreach with respect to this rulemaking. Specifically, it contacted the Citizens Budget Commission, Partnership for New York City, the Buffalo Niagara Partnership and the New York State Economic Development Council and received comments from them. The Department carefully considered all comments made with respect to the regulation. Certain comments were incorporated into the rulemaking while others deemed inappropriate were not.

FEDERAL STANDARDS:

There are no federal standards in regard to the Excelsior Jobs Program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes record-keeping requirements on all businesses (small, medium and large) that choose to participate in the Excelsior Jobs Program. The emergency rule requires all businesses that participate in the Program to establish and maintain complete and accurate books relating to their participation in the Program for the duration of their term in the Program plus three additional years. Local governments are unaffected by this rule.

2. Compliance requirements

Each business choosing to participate in the Excelsior Jobs Program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the program and relating to annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

The information that businesses choosing to participate in the Excelsior Jobs Program would be information such businesses already must establish and maintain in order to operate, i.e. wage reporting, financial records, tax information, etc. No additional professional services would be needed by businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

Businesses (small, medium or large) that choose to participate in the Excelsior Jobs Program must create new jobs and/or make capital investments in order to receive any tax incentives under the Program. If businesses choosing to participate in the Program do not fulfill their job creation or investment commitments, such businesses would not receive financial assistance. There are no other initial capital costs that would be incurred by businesses choosing to participate in the Excelsior Jobs Program. Annual compliance costs are estimated to be negligible for businesses because the information they must provide to demonstrate their compliance with their commitments is information that is already established and maintained as part of their normal operations. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Excelsior Jobs Program is a statewide business assistance program. Strategic businesses in rural areas of New York State are eligible to apply to participate in the program entirely at their discretion. Municipalities are not eligible to participate in the Program. The emergency rule does not impose any special reporting, record keeping or other compliance requirements on private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas nor on the reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Excelsior Jobs Program. The Excelsior Jobs Program will enable New York State to provide financial incentives to businesses in strategic industries that commit to create new jobs and/or to make significant capital investment. This Program, given its design and purpose, will have a substantial positive impact on job creation and employment opportunities. The emergency rule will immediately enable the Department to fulfill its mission of job creation and investment throughout the State and in economically distressed areas through implementation of this new economic development program. Because this emergency rule will authorize the Department to immediately begin offering financial incentives to strategic industries that commit to creating new jobs and/or to making significant capital investment in the State during these difficult economic times, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-21-11-00003-E

Filing No. 423

Filing Date: 2011-05-09

Effective Date: 2011-05-09

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

Action taken: Amendment of Parts 10 and 11; renumbering and amendment of Parts 12 through 14 to Parts 13, 15 and 16; and addition of new Parts 12 and 14 to Title 5 NYCRR.

Statutory authority: General Municipal Law, art. 18-B, section 959; L. 2000, ch. 63; L. 2005, ch. 63 and L. 2009, ch. 57

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate. It bears noting that General Municipal Law section 959(a), as amended by Chapter 57 of the Laws of 2009, expressly authorizes the Commissioner of Economic Development to adopt emergency regulations to govern the program.

Subject: Empire Zones reform.

Purpose: Allow Department to continue implementing Zones reforms and adopt changes that would enhance program's strategic focus.

Substance of emergency rule: The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2000, Chapter 63 of the Laws of 2005, and Chapter 57 of the Laws of 2009. These laws, which authorize the empire zones program, were changed to make the program more effective and less costly through higher standards for entry into the program and for continued eligibility to remain in the program. Existing regulations fail to address these requirements and the existing regulations contain several outdated references. The emergency rule will correct these items.

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16 as amended), which governs the empire zones program, is amended as follows:

1. The emergency rule, tracking the requirements of Chapter 63 of

the Laws of 2005, requires placement of zone acreage into "distinct and separate contiguous areas."

2. The emergency rule updates several outdated references, including: the name change of the program from Economic Development Zones to Empire Zones, the replacement of Standard Industrial Codes with the North American Industrial Codes, the renaming of census-tract zones as investment zones, the renaming of county-created zones as development zones, and the replacement of the Job Training Partnership Act (and private industry councils) with the Workforce Investment Act (and local workforce investment boards).

3. The emergency rule adds the statutory definition of "cost-benefit analysis" and provides for its use and applicability.

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant project) and conforms several existing regulatory definitions to statutory definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise ("QEZE") Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

5. The emergency rule requires additional statements to be included in an application for empire zone designation, including (i) a statement from the applicant and local economic development entities pertaining to the integration and cooperation of resources and services for the purpose of providing support for the zone administrator, and (ii) a statement from the applicant that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed zone.

6. The emergency rule amends the existing rule in a manner that allows for the designation of nearby lands in investment zones to exceed 320 acres, upon the determination by the Department of Economic Development that certain conditions have been satisfied.

7. The emergency rule provides a description of the elements to be included in a zone development plan and requires that the plan be resubmitted by the local zone administrative board as economic conditions change within the zone. Changes to the zone development plan must be approved by the Commissioner of Economic Development ("the Commissioner"). Also, the rule adds additional situations under which a business enterprise may be granted a shift resolution.

8. The emergency rule grants discretion to the Commissioner to determine the contents of an empire zone application form.

9. The emergency rule tracks the amended statute's deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

10. The emergency rule reflects statutory changes to the process to revise a zone's boundaries. The primary effect of this is to limit the number of boundary revisions to one per year.

11. The emergency rule describes the amended certification and decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

12. The emergency rule describes new eligibility standards for

certification. The new factors which may be considered by the Commissioner when deciding whether to certify a firm is (i) whether a non-manufacturing applicant firm projects a benefit-cost ratio of at least 20:1 for the first three years of certification, (ii) whether a manufacturing applicant firm projects a benefit-cost ratio of at least 10:1 for the first three years of certification, and (iii) whether the business enterprise conforms with the zone development plan.

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

14. The emergency rule adds a new Part 12 implementing record-keeping requirements. Any firm choosing to participate in the empire zones program must maintain and have available, for a period of six years, all information related to the application and business annual reports.

15. The emergency rule clarifies the statutory requirement from Chapter 63 of the Laws of 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality.

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

17. The emergency rule clarifies the statutory requirement that certain defined "regionally significant" projects can be located

outside of the distinct and separate contiguous areas. There are four categories of projects: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York, and (iv) a clean energy research and development enterprise. Other projects may be considered by the empire zone designation board. Only one category of projects, manufacturers projecting the creation of 50 or more net new jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

18. The emergency rule clarifies the status of community development projects as a result of the statutory reconfiguration of the zones.

19. The emergency rule clarifies the provisions under Chapter 63 of the Laws of 2005 that allow for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

20. The emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business development and there are other areas of the applicant municipality that can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

The full text of the emergency rule is available at www.empire.state.ny.us

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 6, 2011.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany, NY 12245, (518) 292-5123, email: tregan@empire.state.ny.us

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of a business enterprises as to eligibility of benefits under the program and the decertification of a business enterprise so as to revoke the certification of business enterprises for benefits under the program.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to statutory amendments and the remaining revisions either conform the regulations to existing statute or clarify administrative procedures of the program. These amendments further the Legislative goals and objectives of the Empire Zones program, particularly as they relate to regionally significant projects, the cost-benefit analysis, and the process for certification and decertification of business enterprises. The proposed amendments to the rule will facili-

tate the administration of this program in a more efficient, effective, and accountable manner.

NEEDS AND BENEFITS:

The emergency rule is required in order to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire Zones program, only voluntary participants.

B. Costs to the agency, the State, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's administration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

This emergency rule does not impose any additional costs to the local governments for administration of the Empire Zones program.

PAPERWORK:

The emergency rule imposes new record-keeping requirements on businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years.

DUPLICATION:

The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes new record-keeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the Empire Zone

program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

No professional services are likely to be needed by small and large municipalities in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

No initial capital costs are likely to be incurred by small and large businesses choosing to participate in the Empire Zones program. Annual compliance costs are estimated to be negligible for both small and large businesses. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in full compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small businesses and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are eligible to participate in the program, participation by the municipalities and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule will have either no impact or a positive impact on job and employment opportunities, no further affirmative 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.

Education Department

EMERGENCY RULE MAKING

Annual Professional Performance Reviews for Teachers in the Classroom Teaching Service

I.D. No. EDU-18-10-00015-E

Filing No. 421

Filing Date: 2011-05-06

Effective Date: 2011-05-06

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

Action taken: Amendment of section 100.2(o) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided) and 305(4)

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

Specific reasons underlying the finding of necessity: The proposed amendment relates to annual professional performance reviews of teachers in the classroom teaching service.

As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

Following the Board of Regents adoption of the proposed amendment by emergency action at its April 2010 meeting, the Legislature and the Governor enacted Chapter 103 of the Laws of 2010. This new law establishes a new comprehensive annual evaluation system for teachers and principals based on multiple measures of effectiveness, including student achievement measures, which will result in a single composite effectiveness score for every teacher and principal. It also provides for the establishment of an advisory committee comprised of representatives of teachers, principals and other stakeholders that will make recommendations to the Commissioner and Regents prior to the adoption of implementing regulations and the use of a value-added growth model in evaluations. Department staff are conducting a review of the provisions of the statute and evaluating its impact on the existing APPR regulation. When the Department's review and the work of the advisory committee is complete, we anticipate making further revisions to the proposed amendment. Pursuant to section 202 of the State Administrative Procedure Act, these revisions may not be adopted until publication of a Notice of Revised Rule Making in the State Register and expiration of a 30-day public comment period.

Emergency action is necessary at the April Board of Regents meeting in order to ensure that the rule remains continuously in effect until such time as it can be revised to conform to Chapter 103 of the Laws of 2010 and adopted as a permanent rule, after expiration of the 30-day public comment period for revised rule makings prescribed in the State Administrative Procedure Act, and thereby avoid disruption in the annual professional performance reviews of teachers.

Subject: Annual professional performance reviews for teachers in the classroom teaching service.

Purpose: To prescribe rating categories for APPR for teachers and to require timely and constructive feedback for APPR.

Substance of emergency rule: The Commissioner of Education proposes to amend section 100.2(o) of the Commissioner's regulations, relating to the Annual Professional Performance Review (APPR) for teachers in New York State. The following is a summary of the substance of the proposed amendment.

Annual Professional Performance Review for Teachers

Section 100.2(o) will be repealed effective May 1, 2010.

A new subdivision 100.2(o) will be added, effective May 1, 2010.

A new paragraph (1) of subdivision (o) of section 100.2 shall be added and shall apply for school years commencing on or after July 1, 2000 and ending prior to June 30, 2001. This paragraph shall contain the same provisions as the prior version of 100.2(o) that expires on May 1, 2010, except the requirement that school districts and BOCES report on an annual basis information related to the school district's efforts to address the performance of teachers whose performance is unsatisfactory has been eliminated.

A new paragraph (2) of subdivision (o) shall be added for school years commencing on or after July 1, 2011. The requirements for the annual professional performance reviews of teachers shall be the same as in paragraph (1) of this subdivision, except for the following changes:

Section 100.2(o)(2)(b) will add a new definition of "teacher providing instructional services" to be a teacher in the classroom teaching service as defined in section 80-1.1 of the Commissioner's regulations.

Section 100.2(o)(2)(iii) creates four quality rating categories/criteria to be used in the annual professional performance review of teachers (Highly Effective, Effective, Developing and Ineffective) and defines each of these categories.

Section 100.2 (o)(2)(iii)(a) defines a teacher rated as Highly Effective being a teacher who is performing at a higher level than is typically expected based on the evaluation criteria listed in the subdivision, including acceptable rates of student growth.

Section 100.2 (o)(2)(iii)(b) defines a teacher rated as Effective being a teacher who is performing at a level that is typically expected of a teacher based on the evaluation criteria listed in the subdivision, including acceptable rates of student growth.

Section 100.2 (o)(2)(iii)(c) defines a teacher rated as Developing as one who is not performing at a level that is typically expected of a teacher based on the evaluation criteria listed in the subdivision, including less than acceptable rates of student growth.

Section 100.2 (o)(2)(iii)(d) defines a teacher rated as Ineffective as one whose performance is unacceptable based on the evaluation criteria listed in the subdivision, including unacceptable or minimal rates of student growth.

Professional Performance Review Plan

Section 100.2 (o)(2)(iv)(a)(1) requires the governing body of each school and BOCES to adopt a professional performance review plan of its teachers by September 1, 2011.

Content of the Plan

Section 100.2 (o)(2)(iv)(b)(1)(vii) adds student growth as a new evaluation criteria. This item defines student growth as follows: the teacher shall demonstrate a positive change in student achievement for his or her students between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities and/or disabilities of each student, including English language learners. Student achievement is defined as a student's scores on State assessments for tested grades and subjects and other measures of student learning, including student scores on pre-tests and end-of-course tests, student performance on English language proficiency assessments and other measures of student achievement determined by the school district or BOCES to be rigorous and comparable across classrooms.

Section 100.2 (o)(2)(iv)(b)(4) requires the APPR plan to describe how the new rating categories (Highly Effective, Effective, Developing and Ineffective) are used to differentiate professional development, compensation, and promotion for teachers providing instructional services. The procedures for implementation of the rating

categories shall be consistent with the requirements of article 14 of the Civil Service Law.

Section 100.2 (o)(2)(iv)(b)(5) requires the plan to describe how the school district or BOCES will provide timely and constructive feedback to teachers on all criteria evaluated as part of their annual evaluation, including providing teachers with data on student growth for each of their students, the class and the school as a whole. The plan must also describe how the school or BOCES will provide feedback and training on how the teacher can use such data to improve instruction.

Section 100.2(o)(2)(iv)(b)(6) requires the plan to describe how the school district or BOCES addresses the performance of teachers whose performance is evaluated as ineffective, and shall require a teacher improvement plan for teachers so evaluated or documentation of a prior teacher improvement plan, which shall be developed by the district or BOCES in consultation with such teacher.

Variance

Section 100.2 (o)(2)(vii)(a) grants a variance from the requirements of this paragraph, upon a finding by the commissioner that a school district or BOCES has executed prior to May 1, 2010 an agreement negotiated pursuant to article 14 of Civil Service Law whose terms continue to effect and are inconsistent with such requirement.

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-18-10-00015-P, Issue of May 4, 2011. The emergency rule will expire June 20, 2011.

Text of rule and any required statements and analyses may be obtained from: Christine Moore, NYS Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

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.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statute by requiring school districts and BOCES to provide timely and constructive feedback to teachers as part of their annual evaluations; implementing uniform designated rating categories for the evaluation of teachers, and requiring that school districts and BOCES include a ninth evaluation criteria, i.e., student growth, in the evaluation of their teachers.

3. NEEDS AND BENEFITS:

As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of

how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Where the Commissioner finds that a collective bargaining agreement was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining agreement.

Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

4. COSTS:

(a) Costs to State government: The proposed amendment will not impose any additional costs on State government, including the State Education Department.

(b) Costs to local governments: The proposed amendment will not impose any additional costs on local governments, including school districts and BOCES.

(c) Costs to private regulated parties: In general, the proposed amendment does not impose any additional compliance costs on school districts and BOCES. The Annual Performance Review already requires teachers to measure student's progress in learning based on the analysis of available student performance data. Secondly, the proposed amendment requires districts and BOCES to utilize four designated quality rating categories/criteria. The addition of such rating categories should not impose any additional costs.

Finally, the proposed amendment requires the district/BOCES to provide timely and constructive feedback to teachers as part of their annual evaluation. This feedback should already be provided to teachers to guide their analysis of student progress. If teacher training is necessary, all districts are already required to provide professional development to improve the quality of teaching within the district. Therefore, providing training to teachers to interpret and use student growth data to improve instruction should be incorporated into their current professional development plan, thus avoiding any additional training costs.

(d) Costs to regulating agency for implementing and continued administration of the rule: As stated above in "Costs to State Government," the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to both school districts and boards of cooperative educational services. Therefore, the mandates in Section 3 apply to school districts and BOCES. The State Education Department has determined that uniform requirements are necessary to ensure the quality of the State's teaching workforce and consistency in the evaluations of teachers in the classroom teaching service across the State.

6. PAPERWORK:

The proposed amendment requires school districts and BOCES to include in their professional performance plan a description of how it will provide timely and constructive feedback to its teachers, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment establishes the evaluation criteria for teachers employed in the classroom teaching service in school districts and BOCES. Because these requirements apply to teachers, school

districts and BOCES located in all areas of the State, no viable alternatives were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that establish procedures for the evaluation of teachers.

10. COMPLIANCE SCHEDULE:

School districts and BOCES will be required to comply with the proposed amendments by the 2011-2012 school year.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed amendment applies to school districts and boards of cooperative educational services (BOCES) and relates to the annual professional performance reviews for teachers in the classroom teaching service. 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.

(b) Local governments:

The proposed amendment relates to the criteria for the evaluation of teachers in the classroom teaching service in school districts and BOCES across New York State.

1. EFFECT OF RULE:

The proposed amendment applies to school districts and BOCES located in New York State and relates to the evaluation of teachers in the classroom teaching service.

2. COMPLIANCE REQUIREMENTS:

As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Where the Commissioner finds that a collective bargaining agreement was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining agreement.

Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

3. PROFESSIONAL SERVICES:

The proposed amendment does not mandate that school districts or BOCES contract for additional professional services to comply.

4. COMPLIANCE COSTS:

In general, the proposed amendment does not impose any additional compliance costs on school districts and BOCES. The Annual Performance Review already requires teachers to measure student's progress in learning based on the analysis of available student performance data.

Secondly, the proposed amendment requires districts and BOCES to utilize four designated quality rating categories/criteria. The addition of such rating categories should not impose any additional costs.

Finally, the proposed amendment requires the district/BOCES to provide timely and constructive feedback to teachers as part of their annual evaluation. This feedback should already be provided to teachers to guide their analysis of student progress. If teacher training is necessary, all districts are already required to provide professional development to improve the quality of teaching within the district. Therefore, providing training to teachers to interpret and use student growth data to improve instruction should be incorporated into their current professional development plan, thus avoiding any additional training costs.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements. Economic feasibility is addressed under the Compliance Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment applies to school districts and BOCES and relates to the criteria for the evaluation of teachers in the classroom teaching service. The State Education Department has determined that uniform annual professional performance review standards are necessary to ensure the quality of the State's teaching workforce across the State for teachers in the classroom teaching service. Therefore, no exemption from these requirements has been provided for local governments. However, the Department has eliminated the current reporting requirement which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated unsatisfactory.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES across the State. Comments on the proposed rule were also solicited from the BOCES District Superintendents, New York State Council of School Superintendents, New York State United Teachers, New York State School Boards Association, School Administrators Association of New York State, and New York State Association of School Personnel Administrators.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATE OF THE NUMBER OF RURAL AREAS:

The proposed amendment will affect teachers in school districts and boards of cooperative services in all areas of New York State, including 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:

As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the cur-

rent requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Where the Commissioner finds that a collective bargaining agreement was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining agreement. Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

3. COSTS:

In general, the proposed amendment does not impose any additional compliance costs on school districts and BOCES. The Annual Performance Review already requires teachers to measure student's progress in learning based on the analysis of available student performance data.

Secondly, the proposed amendment requires districts and BOCES to utilize four designated quality rating categories/criteria. The addition of such rating categories should not impose any additional costs.

Finally, the proposed amendment requires the district/BOCES to provide timely and constructive feedback to teachers as part of their annual evaluation. This feedback should already be provided to teachers to guide their analysis of student progress. If teacher training is necessary, all districts are already required to provide professional development to improve the quality of teaching within the district. Therefore, providing training to teachers to interpret and use student growth data to improve instruction should be incorporated into their current professional development plan, thus avoiding any additional training costs.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment establishes uniform evaluation standards for teachers employed in the classroom teaching service in school districts and BOCES across the State. The State Education Department has determined that uniform standards for the evaluation of teachers should be applied across the State. Therefore, no exemption has been provided from these requirements for school districts and BOCES located in rural areas of the State. However, the Department has eliminated the current reporting requirement which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated unsatisfactory.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of

Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES located in rural areas of New York State. Comments on the proposed rule were also solicited from the District Superintendents, New York State Council of School Superintendents, New York State United Teachers, New York State School Boards Association, School Administrators Association of New York State, and New York State Association of School Personnel Administrators, the constituencies of which include those from rural areas.

Job Impact Statement

The purpose of the proposed amendment is to require school districts and BOCES to provide timely and constructive feedback to teachers as part of their annual evaluations; designate uniform quality rating categories/criteria for the evaluation of teachers; and mandate that a ninth evaluation criteria, i.e., student growth be utilized in the evaluation of teachers. Because it is evident from the nature of this regulation 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

The agency received no public comment.

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Education Department publishes a new notice of proposed rule making in the *NYS Register*.

Annual Professional Performance Reviews for Teachers in the Classroom Teaching Service

I.D. No.	Proposed	Expiration Date
EDU-18-10-00015-P	May 5, 2010	May 5, 2011

New York State Energy Research and Development Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State Energy Planning Process

I.D. No. ERD-21-11-00001-P

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

Proposed Action: Repeal of Parts 7840-7863 and addition of new Parts 7840-7863 to Title 9 NYCRR.

Statutory authority: Energy Law, section 6; L. 2009, ch. 433

Subject: State energy planning process.

Purpose: To outline the conduct of the state energy planning process.

Substance of proposed rule (Full text is posted at the following State website: www.nysenergyplan.com): In September 2009, Governor Paterson signed legislation that reinstated Article 6 of the Energy Law, see Chapter 433 of the Laws of 2009. The legislation establishes a State Energy Planning Board ("Board"), requires the Board to adopt a State Energy Plan ("Plan") every four years, and outlines the conduct of the state energy planning proceedings. The Plan is designed to provide guidance for energy-related decisions to be made by the public and private sectors within New York State.

The proposed rule, which would repeal and replace Chapter III of Subtitle BB of Title 9 NYCRR, outlines the conduct of the state energy planning process, in order to ensure that sufficient information is collected to enable the Board to address the goals and objectives identified in the enabling legislation. This summary provides a brief description of the substance of each Part contained in the new rule, to be codified at 9 NYCRR Part 7840-7863.

Subchapter A, General Provisions

Part 7840 contains an introduction to the Chapter.

Part 7841 contains definitions for terms used in the Chapter.

Part 7842 sets forth how the public can access records of the Board, and establishes procedures for the determination of confidential status of information submitted to the Board.

Subchapter B, Procedures

Part 7844 describes the scoping procedure for the energy planning process.

Part 7845 indicates how the Board will commence the new State Energy Planning Proceedings.

Part 7846 describes the filing and service of documents.

Part 7847 provides for issuance of a draft State Energy Plan.

Part 7848 governs the conduct of public comment and evidentiary hearings on the Draft State Energy Plan.

Part 7849 governs the issuance of subpoenas for records, and subpoenas to compel attendance at evidentiary hearings.

Part 7850 governs waiver or requirements of Chapter III.

Part 7851 provides for issuance of the State Energy Plan.

Part 7852 governs amendments to the State Energy Plan.

Subchapter C, Plans of Major Energy Suppliers

Part 7856 contains general provisions relating to the filing of information by major energy suppliers.

Part 7857 sets forth information filing requirements for major electricity suppliers.

Part 7858 sets forth information filing requirements for major natural gas suppliers.

Part 7859 sets forth information filing requirements for major petroleum suppliers.

Part 7860 sets forth information filing requirements for major coal suppliers.

Part 7861 sets forth information filing requirements for major steam suppliers.

Part 7862 sets forth information filing requirements for major biogas, biofuel and biomass producers.

Part 7863 provides for submission of end-use energy efficiency, renewable and emerging technology plans by major energy suppliers and energy service companies.

Text of proposed rule and any required statements and analyses may be obtained from: Jill Kendall, Legal Dept., NYS Energy Research and Development Authority, 17 Columbia Circle, Albany, NY 12203, (518) 862-1090 ext. 3321, email: jrk@nyserda.org

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

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

Regulatory Impact Statement

1. Statutory Authority:

The statutory authority for these proposed regulations is Section 6 of the Energy Law. In September 2009, Governor Paterson signed legislation that reinstated Article 6 of the Energy Law, see Chapter 433 of the Laws of 2009. The legislation establishes an Energy Planning Board (“Board”), requires the Board to adopt a State Energy Plan (“Plan”) every four years, and outlines the conduct of the state energy planning proceedings. The Plan is designed to provide guidance for energy-related decisions to be made by the public and private sectors within New York State. Section 6-102(4) empowers the Board to adopt rules and regulations “as necessary and appropriate” to implement the legislation.

The statute states that the Board shall consist of fourteen voting members: the Chair of the Public Service Commission, the Commissioner of Environmental Conservation, the Commissioner of Economic Development, the Commissioner of Transportation, the Commissioner of Labor, the Director of the State Emergency Management Office, the Chair of the Consumer Protection Board, the Commissioner of Health, the President of the New York State Urban Development Corporation, the Secretary of State, the President of the New York State Energy Research and Development Authority, and a representative appointed by each of the Governor, the speaker of the as-

sembly and the temporary president of the senate¹. The presiding officer of the New York Independent System Operator is a nonvoting member of the Board.

Section 6-102(2)(b) of the legislation creates regional planning councils, representing two regions - a Downstate region, consisting of New York City and 8 other downstate counties; and an Upstate region, consisting of the remaining counties of the State. The Governor, temporary president of the Senate and speaker of the assembly each appoint 3 regional planning members per region, for a total of 18 council members. Regional council members may solicit input from stakeholder interests within their region, and must transmit a report to the Board containing any recommendations specific to their region “on a schedule concurrent with the release of the draft state energy plan.”

The planning process created by the law is generally similar to the process that existed under the former Article 6 of the Energy Law, as well as the process followed under Governor Paterson’s April 2008 Executive Order², which resulted in issuance of an Energy Plan in December 2009. The first draft of the new plan must be presented for public comment by September 1, 2012 and the final version of such plan must be issued by March 15, 2013.

2. Legislative Objectives:

Section 6-102(5) of the Energy Law directs that in its consideration and development of policies, programs and other actions, the Board shall be guided by the following goals:

- improving the reliability of the State’s energy systems;
- insulating consumers from volatility in market prices;
- reducing the overall cost of energy in the State; and
- minimizing public health and environmental impacts, particularly the environmental impacts related to climate change.

Energy Law section 6-104(2) directs that the Plan include the following: energy demand and supply forecasts, together with an assessment of the ability of existing energy supply sources and transportation and transmission systems to meet future needs; identification and assessment of the costs, risks, benefits, uncertainties and market potential of energy supply source alternatives; emerging trends in supply, price, and demand; an analysis of security issues, considering both natural and human threats to the State’s energy systems; an environmental justice analysis; urban planning/smart growth alternatives to reduce energy/transportation demand; and an inventory of greenhouse gas emissions, as well as strategies for facilitating and accelerating the use of low carbon energy sources and/or carbon mitigation measures.

In developing the Plan, the Board must identify: (1) policies and programs designed to maximize cost-effective energy efficiency and conservation activities to meet projected demand growth, and (2) the most appropriate state agency or authority with the responsibility for implementing or overseeing such prioritized programs or activities. Section 6-102(5) (a) and (b). The Plan must also (1) recommend administrative and legislative actions to implement policies, objectives and strategies identified in the Plan, and (2) include an assessment of the impacts of implementation of the Plan on “economic development, health, safety and welfare, environmental quality, and energy costs for consumers, specifically low-income consumers.” Section 6-104(2)(j) and (k).

The legislation empowers the Board to solicit information from major energy suppliers and other entities sufficient to address the goals and specific components of the Plan identified by the Legislature, as explained above. Section 6-106(3). The statute further empowers the Board to seek “such other information” from major energy suppliers and others “as the Board may, by regulation, require to carry out the purposes” of the legislation. Section 6-106(3)(a)(x).

3. Needs or Benefits:

The regulations outline the conduct of the state energy planning process, in order to ensure that sufficient information is collected to enable the Board to address the goals and objectives identified in the enabling legislation. Specifically: Subchapter A, “General Provisions,” defines key terms, sets forth how the public can access records of the Board, and establishes procedures for the determination

of confidential status of information submitted to the Board. Subchapter B, "Procedures," addresses the filing and service of documents required to be submitted under the regulations, provides for issuance of a draft and final Plan, and governs the conduct of public comment and evidentiary hearings. Subchapter C, "Plans of Major Energy Suppliers," sets forth information filing requirements of major energy suppliers, defined as any major electricity, natural gas, petroleum, coal or steam supplier; and major biogas, biofuel, and biomass producers or processors. See Section 7841(a)(44). The regulations in turn define "major" with regard to each of those sources of energy.

In addition to the specific information described in Subchapter C, the regulations empower the Board to require the submission by any major energy supplier of any other information the Board deems necessary to meet its obligations under the enabling legislation. See 7857.3 (electricity); 7858.3 (natural gas); 7859.3 (petroleum); 7860 (coal); 7861.5 (steam); 7862.3 (biogas, biofuels, biomass).

4. Costs:

Recipients of information requests from the Board will obviously incur costs in responding. However, unlike prior state energy planning regulations, which specified dates by which information was required to be submitted to the Board, these proposed regulations state that the Chair of the board will establish a schedule for submission of information requested by the Board. Notably, the regulations direct the Board to "make every effort to obtain relevant information under this Subchapter C from entities that are members of the Board, including the Bulk System Operator, before requiring filings from major energy suppliers." Section 7856.2. Thus, for example, the Board will rely on publicly available data for state energy planning analysis work. Examples include the following:

Annual "Gold Book" Load and Capacity Data, New York Independent System Operator. Provides electricity load and peak demand history and 10-year forecasts at the system level, as well as extensive data for each generating facility in New York, including capacity ratings, generation, location, age, and primary and back-up fuels.

Annual Energy Outlook, U.S. Energy Information Administration. Provides 25-year forecasts of energy use and prices for all fuels and all sectors for the U.S. and for the Mid-Atlantic region (New York, Pennsylvania, New Jersey, and Delaware), under various scenarios and assumptions, which serve as useful indicators of expectations for New York.

Five Year Book, New York Department of Public Service. Provides annual data on electricity and gas delivered by each utility, average cost per customer for electricity and gas by utility and customer type, average annual total electricity and gas annual bill by utility and customer type, and cost of electricity and gas to customers by cost components.

Ambient Air Quality Report, New York State Department of Environmental Conservation, Air Division. Provides annual air quality monitoring data and exceedance data for sulfur dioxide, nitrogen oxides, ozone, carbon monoxide, inhalable particulates, and lead.

Oil, Gas and Mineral Resources Annual Report, New York State Department of Environmental Conservation, Division of Mineral Resources. Provides data on production and market value of natural gas and oil produced, permits issued, well completions, underground natural gas storage, acreage, reclamation, and enforcement.

Two other documents will be very helpful in developing the Plan. The first is the Reliability Compliance Program Report, issued by the New York State Reliability Council. This report contains extensive recent data on metrics used to measure the reliability of the electric system, including resource adequacy, transmission capability, operating reserves, system protection, system restoration, and compliance with local reliability rules. The second document is the Reliability Needs Assessment, prepared by the New York Independent System Operator. This document provides a long-term reliability assessment of both reserve adequacy and transmission security of the New York Bulk Power System conducted over a 10-year future planning period.

Analysis and information obtained from other State resources and plans, such as the Interim Report of the Climate Action Plan³, the New York State Emergency Management Plan⁴, and transportation planning documents, will also be integrated into the State Energy Plan, where appropriate.

Additionally, The Division of Homeland Security and Emergency Services (DHSES) was statutorily created in July 2010 (<http://www.dhSES.ny.gov/about/legislation/documents/Final-Merger-Bill.pdf>), consolidating five agencies, including the Office of Emergency Management (SEMO). As the Board addresses security issues in the Plan, the Board will tap into the various offices of DHSES (Counter Terrorism, Emergency Management, Fire Prevention and Control, Cyber Security, and Interoperable & Emergency Communications).

Thus, every effort will be made to mine public data as well as information in the possession of state agencies and other entities on the Board prior to requiring submission by major energy suppliers under Subchapter C. However, to the extent that the Board determines that it needs information from major energy suppliers, it is doing so meet its obligations to address the numerous items set forth in the enabling legislation, as detailed above in the Legislative Objectives section.

5. Paperwork:

As explained in the Costs section above, the Board will make every effort to obtain needed information from entities that serve on the Board, as well as various sources of public information. This will significantly reduce paperwork obligations on the part of entities that receive information requests from the Board.

6. Local Government Mandates:

As noted in the Legislative Objectives section above, the legislation empowers the Board to solicit information from major energy suppliers and other entities sufficient to address the goals and specific components of the Plan identified by the Legislature, Section 6-106(3). Examples of other entities listed in the statute include the following: energy transmission or distribution companies; electric, gas or steam corporations; owners or operators of electric generation facilities; and the like. To the extent a municipality is engaged in one or more of these activities, the Board may request that it submit relevant information. Again, the Board will first make every effort to obtain necessary information from entities that serve on the Board, as well as various sources of public information.

7. Duplication:

As explained above in the Costs section, the Board will make every effort to obtain relevant information from state agencies that have collected such information in their regulatory or other capacity, rather than request that major energy suppliers and others provide such information to the Board. Additionally, to extent that major energy suppliers or others file information with federal agencies that is relevant to the state's planning process, the Board will make every effort to minimize additional work, e.g. allow copies of federal filings or relevant portions of such filings to be submitted to the Board.

8. Alternative Approaches:

The Legislative Objectives section sets forth the numerous issues that the Plan must address, as well as the assessments and recommendations that the Board must provide. The Board has determined that the optimal- and indeed the only- means of accomplishing these tasks is to: (1) obtain public data as well as information in the possession of state agencies and other entities on the Board; and (2) when necessary, request information from major energy suppliers and other entities listed in the enabling legislation.

The Board has already commenced stakeholder outreach efforts in the process of developing the Draft Plan. The Board held its first meeting on November 23, 2010, at which time the Board announced that it would be issuing (1) a Draft Scope, and (2) implementing regulations. On March 10, 2011, the Draft Scope was posted on the Board's website (<http://www.nysenergyplan.com/scope.html>), as well as provided directly to a stakeholder list consisting of over 650 entities and individuals. The purpose of the Scope is to broadly define topic areas for development in the Draft Plan, consistent with the enabling legislation. The deadline for written comments on the Draft Scope was April 29, 2011; the Board received over 60 comments. Commenting on March 24, 2011, the Board's staff also began holding meetings with various stakeholder groups to seek input to the Draft Scope and to discuss issues of concern for potential development in the Plan. Stakeholders have included state and local government agencies and associations; business, consumer and industrial groups; utilities,

energy suppliers, and energy industry groups; large commercial and industrial energy users, environmental and community organizations, clean/renewable energy entities, energy service companies, and workforce development groups. The Board’s staff expects to meet with representatives from over 70 interest groups. Each meeting is initiated with identification of the goals and requirements set forth by the enabling legislation. In the development of prior state energy plans, many stakeholders have voluntarily submitted industry data and information, and they have indicated an interest in providing data and information to support the upcoming planning process.

9. Federal Standards:

The Plan is designed to address the goals identified by the Legislature, e.g. improving the reliability of New York State’s energy systems (see section 6-102(5)) and to provide guidance for energy-related decisions to be made by the public and private sectors within the state. The Board does not envision any conflicts with standards established by the federal government in this area.

10. Compliance Schedule:

Unlike prior state energy planning regulations, which specified dates by which information was required to be submitted to the Board, these proposed regulations state that the Chair will establish a schedule for submission of information requested by the Board. The Chair will ensure that recipients of information requests are given sufficient time within which to respond.

¹ The Department of Economic Development (DED) and the Urban Development Corporation (UDC) are known as Empire State Development (ESD), and the President and CEO of ESD serves as the Commissioner of DED. Consequently, the board appointee for UDC and DED is the Commissioner of DED.

² Executive Order No. 2 (April 9, 2008) http://www.nysenergyplan.com/presentations/EO_2.pdf

³ <http://www.nyclimatechange.us/InterimReport.cfm>

⁴ http://www.semo.state.ny.us/uploads/2011_01_NYS%20CEMP_Vol_02.pdf

Regulatory Flexibility Analysis

Finding:

The proposed rule will not impose an adverse economic impact, or reporting, recordkeeping or other compliance, on small businesses or local governments.

Reasons for Finding:

The legislation empowers the Board to solicit information from major energy suppliers and other entities sufficient to address the goals and specific components of the Plan identified by the Legislature, Energy Law section 6-106(3). Examples of other entities listed in the statute include the following: energy transmission or distribution companies; electric, gas or steam corporations; owners or operators of electric generation facilities; and the like. To the extent a small business or municipality is engaged in one or more of these activities, the Board may request that it submit relevant information. However, it is not expected that small businesses will fall under the definition of major energy suppliers. In any event, the proposed rule requires that the Board first make every effort to obtain necessary information from entities that serve on the Board, as well as various sources of public information before submitting information requests to any entities, including small businesses or local governments. Further, to the extent that small businesses or local governments are impacted by this proposed rule at all, it is not anticipated that either group will need to retain additional professional services to respond to information requests from the Board.

Rural Area Flexibility Analysis

Finding:

The proposed rule will not impose an adverse economic impact on rural areas. It does not impose significant reporting, recordkeeping or other compliance on public or private entities in rural areas.

Reasons for Finding:

The legislation empowers the Board to solicit information from major energy suppliers and other entities sufficient to address the goals and specific components of the Plan identified by the Legislature,

Energy Law section 6-106(3). Examples of other entities listed in the statute include the following: energy transmission or distribution companies; electric, gas or steam corporations; owners or operators of electric generation facilities; and the like. To the extent a public or private entity located in a rural area is engaged in one or more of these activities, the Board may request that it submit relevant information. However, the proposed rule requires that the Board first make every effort to obtain necessary information from entities that serve on the Board, as well as various sources of public information before submitting information requests to any entities, including those located in rural areas.

Job Impact Statement

The proposed rule will not have a substantial adverse impact on jobs and employment opportunities.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Hunting with Crossbows and Modified Longbows

I.D. No. ENV-21-11-00002-P

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

Proposed Action: Addition of sections 2.3 and 2.4; and repeal of section 170.6 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303 and 11-1901

Subject: Hunting with crossbows and modified longbows.

Purpose: To authorize use of a crossbow during certain big game hunting seasons, and to eliminate the modified archer permit.

Text of proposed rule: Title 6 of NYCRR, Part 2, entitled “More Than One Species,” and Title 6, Part 170, entitled “Miscellaneous Licenses”, are amended as follows:

Adopt a new section 6 NYCRR 2.3 to read as follows:

2.3 *Hunting with a crossbow.*

(a) *Definitions.*

(1) “*Crossbow Certificate of Qualification*” means a certificate, as provided by the Department of Environmental Conservation (DEC or department), signed by the hunter that will be using a crossbow, certifying that he or she has satisfied the department’s legal requirements for crossbow training.

(2) “*Late muzzleloading season*” means a special season in which the muzzleloader is the only firearm permitted and which immediately follows the regular open season for deer or bear, as defined in sections 1.22 and 1.31, respectively, of Part 1 of this Title.

(3) “*Unloaded crossbow*” means a crossbow with the bolt removed, regardless whether the crossbow is cocked or uncocked.

(4) “*Crossbow that is taken down*” means a crossbow that has the limbs removed from the stock, or securely fastened in a case, or locked in the trunk.

(b) *Purpose.* The provisions of this section shall apply to the taking of deer and bear by crossbow pursuant to section 11-0901 of the Environmental Conservation Law.

(1) *Training.* Hunters may use a crossbow to hunt deer or bear only after they have completed training in the safe use of hunting with a crossbow and responsible crossbow hunting practices. The department shall post on-line within the department website and in the New York State Hunting and Trapping Regulations Guide, requirements and directions for completing crossbow training. After completion of the training, the hunter must complete and sign a crossbow certificate of qualification provided by the department.

(2) *Open season.* Notwithstanding the provisions of subdivision

(e) of section 1.22 and subdivision (4) (i) of section 1.31 of this title, crossbows may be used during all regular big game hunting seasons and areas in which a shotgun or muzzleloader is permitted and all late muzzleloading seasons.

(3) License requirements. Any person who hunts or takes deer or bear with a crossbow during a regular big game season or late muzzleloading season must possess, on his or her person:

(i) for New York State residents, a valid resident big game license and; if hunting in a late muzzleloading season they must possess a muzzleloading season privilege; for nonresidents, a valid non-resident combination or muzzleloading license and when hunting for bear, a nonresident bear privilege;

(ii) a signed crossbow certificate of qualification from completion of crossbow training as provided by the department.

(4) Valid Tags. Regular season deer tags, deer management permits, deer management assistance permits, bow/muzzleloader season either-sex tags, and bow/muzzleloader antlerless tags are valid for use when hunting deer with a crossbow. A resident bear tag and nonresident bear tag are valid for use when hunting bear with a crossbow.

(5) Other requirements. Except as otherwise provided in this section, the provisions of the Environmental Conservation Law relating to deer and bear hunting, including hunting hours, manner of taking, tagging, reporting, possession, and transporting, shall apply to hunting and taking deer or bear pursuant to this section.

Adopt a new section 6 NYCRR 2.4 to read as follows:

2.4 Authorization to use a longbow equipped with a mechanical device.

(a) Definitions.

(1) "Modified longbow authorization" means department authorization to use a longbow equipped with a mechanical device to take big game or small game pursuant to this section.

(2) "Longbow equipped with a mechanical device" means an otherwise legal longbow, which has been equipped with a mechanical device attached to the handle or riser of the longbow for holding and releasing the bowstring.

(3) "Longbow" means a longbow, recurve bow or compound bow which is designed to be used by holding the bow at arm's length, with arrow on the string, and which is drawn, pulled and released by hand or with the aid of a hand-held trigger device attached to the bowstring.

(4) "Physician Certification" means a signed statement by a physician duly licensed to practice medicine certifying the nature, extent, and term of physical disability that prohibits the hunter from drawing or holding a longbow.

(5) "Bowhunter with a physical disability" means a person who, due to physical disabilities, is incapable of drawing, holding, or releasing a longbow.

(b) A bowhunter with physical disabilities may receive authorization by the department to use a longbow equipped with a mechanical device to take big game or small game. To obtain such modified longbow authorization the bowhunter must:

(1) obtain a modified longbow authorization form that the department shall post on the DEC website and make available in hard copy to anyone who requests one.

(2) complete the modified longbow authorization form, which shall include information from the bowhunter with physical disabilities, including a signed statement from a physician duly licensed to practice medicine. This physician shall certify that the bowhunter is physically incapable of drawing, holding or releasing a longbow because of a physical disability and shall indicate the term of the disability; and

(3) for New York State residents, a valid hunting license to hunt small game, or license to hunt big game with a bowhunting privilege; for nonresidents, a valid nonresident hunting license to hunt small game, or a valid nonresident combination or bowhunting license to hunt big game, and when hunting for bear, a nonresident bear privilege.

(c) Modified longbow authorization forms are subject to the following conditions:

(1) Application must be made on the modified longbow authorization form provided by the department.

(2) The modified longbow authorization form must be in the holder's possession while hunting with a longbow equipped with a mechanical device. The bowhunter shall also be in possession of all other required licenses and permits.

(3) The modified longbow authorization is valid as per the term indicated in the physician's statement.

(4) The department may provide the holder of a previous modified archer permit authorization for use of a modified longbow. This authorization will replace all previous authorization issued for the terms of the certification.

(5) The holder of the modified longbow authorization form is subject to all other applicable provisions of the Environmental Conservation Law and rules and regulations adopted pursuant thereto.

Repeal existing subdivision 6 NYCRR 170.6, "Permit to use a bow equipped with a mechanical device."

Text of proposed rule and any required statements and analyses may be obtained from: Bryan Swift, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8883, email: wildliferegs@gw.dec.state.ny.us

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

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

Additional matter required by statute: A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

Regulatory Impact Statement

1. Statutory authority:

Section 11-0303 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (DEC or department) to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. ECL 11-0303 grants the department authority to efficiently manage fish and wildlife resources of the State.

Subdivision 15 of section 11-0901 of the ECL was amended in 2010 to authorize the department to adopt regulations allowing the taking of big game or small game by the use of a longbow equipped with a mechanical device for holding and releasing the bowstring by any person who was physically incapable of drawing and holding a longbow because of a temporary or permanent physical disability. For purposes of this subdivision, a person with a physical disability shall mean any person who has a statement of a physician that such person is physically incapable of drawing, holding, or releasing a longbow.

Section 11-0901 of the ECL was further amended by addition of a new subdivision 17 which authorized the department to adopt regulations allowing the taking of big game (deer and bear) by the use of a crossbow, subject to certain provisions reflected in the proposed regulations. Section 11-0713 of the ECL was amended to authorize the department to adopt regulations for the training in safe use of a crossbow for hunting and responsible hunting practices, and to specify the documentation necessary as proof of completing the required training. Information on training and certification is to be provided on-line within the DEC website, in the annual hunting guide, in hunter education courses, and from other sources. All of the above provisions that were enacted in 2010 included an expiration date of December 31, 2012.

2. Legislative objectives:

The legislative objectives behind the general statutory provisions listed above are to authorize the department to establish, by regulation, certain basic wildlife management tools, including hunting. Periodically, the department adjusts its hunting regulations in response to changes in hunting technology. By doing so, wildlife management

tools are kept up to date. The legislative objectives of the provisions enacted in 2010 authorized the taking of big game by the use of a crossbow during regular and late hunting seasons when firearms are also allowed, and to require some form of training for hunters who wished to use a crossbow in the field. An additional objective of the provisions enacted in 2010 was to eliminate the permit requirement for hunters with permanent physical disabilities who wished to use a modified longbow equipped with a mechanical device for holding and releasing the bowstring.

3. Needs and benefits:

New regulations must be adopted to implement provisions of legislation allowing the use of crossbows for big game hunting and eliminating the permit requirement for certain disabled hunters to use special archery equipment during any big game or small game hunting seasons.

Each element of the proposal is explained below:

Use of Crossbows for Big Game Hunting

The new legislation authorizes the department to allow the taking of big game (deer and bear) by the use of a crossbow during any regular big game season, or any special muzzleloader season that follows the regular season. Therefore, we propose adoption of relatively simple changes to deer and bear hunting regulations to include the crossbow as a legal implement during any regular season and post season where a shotgun or muzzleloader is legal.

Training Requirements for Use of a Crossbow

The new legislation authorizes the department to specify the training required of persons who wish to hunt with a crossbow. We propose that all new hunters will receive crossbow training in the existing hunter education courses. We propose that existing hunters who completed hunter education before crossbow training was added, or who have hunter education certification from another state, will have to review information on crossbow safety and use what we will make available on-line, in our annual hunting guide, or from other sources. Hunters who complete the crossbow training will be required to carry a standard certificate of qualification affirming that they completed the training requirement before hunting with a crossbow.

Disabled Archers

The new legislation authorizes the department to allow the taking of big game or small game by the use of a specially equipped longbow, by any person who is incapable of drawing, holding, and releasing a longbow because of a physical disability. This eliminates the need for hunters with physical disabilities to obtain a "modified archer permit" from the department to use a longbow with a mechanical device to hold and release the bowstring.

We propose to allow hunters with either temporary or physical disabilities, who must carry a standard department form signed by their physician verifying that the hunter meets the qualifications established in law, to use a (vertical) longbow equipped with a mechanical device for holding and releasing the bowstring. The required form would be the principal form for verification of the medical condition of the hunter. It would be available from the department web-site and by regular mail upon request. Alternatively, the department may issue certification directly to any person who previously held a "permit to use a longbow equipped with a mechanical device", since issuance of those permits required a statement from a physician certifying that the hunter was permanently incapable of drawing or holding a longbow.

We will also repeal existing section 170.6 (Permit to use a longbow equipped with a mechanical device) since these permits will no longer be required.

4. Costs:

Training in the safe use of crossbows must be incorporated into the statewide Sportsman Education curriculum. A minimum number of crossbows (200 costing approximately \$60,000, eligible for funding with Federal aid grant for sportsman education) will need to be purchased by the department to supply each region with enough for hands-on training for approximately 30,000 new students annually. Some staff time will need to be devoted to development of effective on-line training and compliance materials. We will incorporate materials used by other states to the extent possible.

There will be no additional costs for hunters who want to use a crossbow, and disabled hunters will no longer have to pay an application fee for a permit to hunt with a specially equipped longbow.

5. Local government mandates:

There are no local governmental mandates associated with this proposed regulation.

6. Paperwork:

No additional paperwork is associated with this proposed regulation. The permit application process for hunters with physical disabilities will be eliminated.

7. Duplication:

There are no other regulations similar to this proposal.

8. Alternatives:

The new legislation left few alternatives for the department to consider in adopting crossbow hunting regulations. Some flexibility was provided in the training requirements that hunters must comply with to use a crossbow for big game hunting.

One alternative would be to require every crossbow hunter, regardless of any prior hunting license or experience, to attend a special crossbow hunting course. This would place a tremendous burden on many thousands of potential crossbow hunters, and would overwhelm our volunteer instructors who would have to meet this demand in addition to providing basic hunter education for approximately 30,000 new hunters annually. A more rigorous on-line training and testing system with electronic certification would be another option, but the time and cost required to develop and implement such a system would be prohibitive, and may have limited utility since the legislation is scheduled to expire in 2012. Moreover, the basic principles of hunting safety and responsible hunting practices are not unique to crossbows, so the standard training that all hunters must have completed to purchase a hunting license helps promote safe and responsible hunting activities. The few unique aspects of hunting with a crossbow that relate to safety can be met by hunters reviewing their crossbow owner's manual and reviewing a set of key messages that will be provided by the department on its website and in the annual hunting guide, in addition to being added to the hunter education curriculum for new hunters.

The requirement that hunters must carry a physician's statement for use of a modified longbow could have been met with almost any form of medical note. However, we decided that a standardized form was better for simplicity, and would help ensure that medical professionals understood the legal requirements to qualify hunters for use of this equipment.

9. Federal standards:

There are no federal standards pertaining to the use of crossbows or modified longbows.

10. Compliance schedule:

Hunters using a crossbow or modified longbow must comply with this regulation during the 2011-12 and 2012-13 hunting seasons.

Regulatory Flexibility Analysis

In 2010, the Environmental Conservation Law (ECL) was amended to authorize the Department of Environmental Conservation (department) to adopt regulations allowing the taking of big game by the use of a crossbow after training in the safe use of a crossbow for hunting. The ECL was further amended to authorize the department to adopt regulations allowing the taking of big game or small game by the use of a longbow equipped with a mechanical device for holding and releasing the bowstring by any person who was physically incapable of drawing and holding a longbow because of a temporary or permanent physical disability.

The proposed regulation has no effect on small businesses or local governments. It simply clarifies that crossbows or modified longbows may be used for hunting pursuant to ECL section 11-0901. Therefore, the department has determined that a Regulatory Flexibility Analysis for Small Businesses and Local Governments is not needed.

Rural Area Flexibility Analysis

In 2010, the Environmental Conservation Law (ECL) was amended to authorize the Department of Environmental Conservation (depart-

ment) to adopt regulations allowing the taking of big game by the use of a crossbow after training in the safe use of a crossbow for hunting. The ECL was further amended to authorize the department to adopt regulations allowing the taking of big game or small game by the use of a longbow equipped with a mechanical device for holding and releasing the bowstring by any person who was physically incapable of drawing and holding a longbow because of a temporary or permanent physical disability.

The proposed regulation has no effect on rural areas. It simply clarifies that crossbows or modified longbows may be used for hunting pursuant to ECL section 11-0901. Therefore, the department has determined that a Rural Area Flexibility Analysis is not needed.

Job Impact Statement

The proposed regulation does not affect any public or private sector jobs or employment opportunities. It simply clarifies that crossbows or modified longbows may be used for hunting pursuant to Environmental Conservation Law section 11-0901. Therefore, the Department of Environmental Conservation has determined that a Job Impact Statement is not needed.

Insurance Department

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Insurance Department publishes a new notice of proposed rule making in the NYS Register.

Standards for the Management of the New York State Retirement Systems

I.D. No.	Proposed	Expiration Date
INS-11-10-00002-P	March 17, 2010	April 28, 2011

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notification Concerning Tax Refunds

I.D. No. PSC-21-11-00004-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 Verizon New York Inc.'s petition seeking retention of a portion of a property tax refund related to its regulated, intrastate New York operations.

Statutory authority: Public Service Law, section 113(2)

Subject: Notification concerning tax refunds.

Purpose: To consider Verizon New York Inc.'s request to retain a portion of a property tax refund.

Substance of proposed rule: The Commission is considering whether to approve, reject or modify, in whole or in part, Verizon New York Inc.'s request to retain the portion of a property tax refund received that is allocable to Verizon's regulated, intrastate New York operations. Verizon proposes to retain such tax refund in accordance with earlier Commission Orders involving previous Verizon tax refunds.

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.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

Public comment will be received until: 45 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.

(11-C-0209SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Hourly Pricing

I.D. No. PSC-21-11-00005-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 a proposed filing by Central Hudson Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 15 — Electricity.

Statutory authority: Public Service Law, section 66(12)

Subject: Hourly Pricing.

Purpose: To revise its incremental charge for hourly pricing customers and identify the monthly charge for cellular-enabled meters.

Substance of proposed rule: The Commission is considering a proposal filed by Central Hudson Gas and Electric Corporation (Central Hudson) to revise its incremental charge applicable to Service Classification No. 2 customers subject to the Hourly Pricing and identify the monthly charge for any Service Classification Nos. 3 and 13 customers choosing a cellular-enabled meter. The proposed filing has an effective date of September 1, 2011. The Commission may adopt in whole or in part, modify or reject Central Hudson's proposal, and may apply its decision to other utilities.

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.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

Public comment will be received until: 45 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.

(11-E-0212SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Ownership Interests in a 50 MW Generation Facility from Black River to ReEnergy

I.D. No. PSC-21-11-00006-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 requesting the approval of the transfer of ownership interests in a 50 MW generation facility from Black River Energy LLC (Black River) to ReEnergy Black River LLC (ReEnergy).

Statutory authority: Public Service Law, sections 2(11), 5(1)(b) and 70

Subject: Transfer of ownership interests in a 50 MW generation facility from Black River to ReEnergy.

Purpose: Consideration of the transfer of ownership interest in a 50 MW generation facility from Black River to ReEnergy.

Substance of proposed rule: The Public Service Commission is considering a petition filed on April 22, 2011 requesting approval of the transfer of ownership interests in an approximately 50 MW coal-fired generation facility located at Fort Drum in the Town of LeRay from Black River Energy LLC to ReEnergy Black River LLC (ReEnergy). ReEnergy intends to

convert the generation facility from coal fuel to primarily biomass (wood) fuel while also using other solid fuels such as tire-derived fuel. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.state.ny.us

Public comment will be received until: 45 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.

(11-E-0181SP1)

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

Implementing Residential Consumer Discount Programs of the Recharge New York Power Program

I.D. No. PSC-21-11-00007-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 proposals to implement the Residential Consumer Discount Programs, Public Authorities Law section 1005(13-b).

Statutory authority: Public Service Law, sections 4(1), 65 and 66; Public Authorities Law, section 1005; Economic Development Law, section 188-a

Subject: Implementing Residential Consumer Discount Programs of the Recharge New York Power Program.

Purpose: Consideration of mechanisms for mitigating price impacts from withdrawal of hydroelectric power.

Substance of proposed rule: The Recharge New York Power Program Act (the Act) creates a new economic development program. A provision of the Act uses New York Power Authority (NYPA) low-cost hydroelectric power to attract and/or retain business in New York. The hydroelectric power is being withdrawn from its present use of serving residential customers in the Niagara Mohawk Power Corporation, New York State Electric and Gas, and Rochester Gas and Electric service territories. To mitigate the impact on the residential customers losing the benefit of NYPA's hydroelectric power, the Act includes the Residential Consumer Discount Programs. The Public Service Commission has requested that the three relevant utilities file proposals to implement the discounts. The Commission is considering whether to approve, reject or modify, in whole or in part, the proposed tariff amendments.

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.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

Public comment will be received until: 45 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.

(11-E-0176SP1)

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-10-11-00001-A

Filing No. 426

Filing Date: 2011-05-10

Effective Date: 2011-05-10

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2011 through June 30, 2011.

Text or summary was published in the March 9, 2011 issue of the Register, I.D. No. TAF-10-11-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

NOTICE OF ADOPTION

Bureau of Conciliation and Mediation Services Procedures

I.D. No. TAF-10-11-00002-A

Filing No. 427

Filing Date: 2011-05-10

Effective Date: 2011-05-25

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

Action taken: Amendment of Part 4000 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 170(3-a) and 171, subdivision First

Subject: Bureau of Conciliation and Mediation Services procedures.

Purpose: To reflect statutory provisions relating to filing of certain petitions and to make other minor technical amendments.

Text or summary was published in the March 9, 2011 issue of the Register, I.D. No. TAF-10-11-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

Assessment of Public Comment

The agency received no public comment.

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

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-21-11-00009-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period July 1, 2011 through September 30, 2011.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxiii) to read as follows:

Sales Tax Component	Motor Fuel		Diesel Motor Fuel		
	Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxii) April-June 2011	16.0	41.0	16.0	24.0	39.25
(lxiii) July-September 2011	16.0	41.0	16.0	24.0	39.25

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

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

Public comment will be received until: 45 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.

Urban Development Corporation

EMERGENCY RULE MAKING

Small Business Revolving Fund

I.D. No. UDC-21-11-00008-E

Filing No. 425

Filing Date: 2011-05-10

Effective Date: 2011-05-10

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

Action taken: Addition of Part 4250 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 1968, ch. 174; L. 2010, ch. 59, section 16-t

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

Specific reasons underlying the finding of necessity: The delay in the approval of the State budget and the current economic crisis, including high unemployment and the immediate lack of financing from traditional financial institutions for job generating small business, are the reasons for the emergency adoption of this Rule which is required for the immediate

implementation of the Small Business Revolving Loan Fund in order to promptly provide assistance to the State's small businesses in order to sustain and increase employment generated by these businesses.

Subject: Small Business Revolving Fund.

Purpose: Provide the basis for administration of Small Business Revolving Loan Fund including evaluation criteria and application process.

Text of emergency rule: SMALL BUSINESS REVOLVING LOAN FUND Section 4250.1 Purpose.

The purpose of these regulations is to set forth and codify administration by the New York State Urban Development Corporation (the "Corporation") of the Small Business Revolving Loan Fund (the "Program") authorized by Section 16-t of the New York State Urban Development Corporation Act (the "Act"). The Corporation is authorized, within available appropriations, to provide low interest loans to community development financial institutions, in order to provide funding for those lending organizations' loans to small businesses, located within New York State, that generate economic growth and job creation within New York State but that are unable to obtain adequate credit or adequate terms for such credit. If the use of a community development financial institution is not practicable based upon an assessment of geographic and administrative capacity and other factors as determined by the Corporation, then the Corporation is authorized, within available appropriations, to provide low interest loans to the following other local community based lending organizations: small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.

Section 4250.2 Definitions.

a) "Administrative Costs" shall mean expenses incurred by a Community Based Lending Organization in its administration of a Program Loan from the Corporation.

b) "Administrative Income" shall mean income from (i) fees charged by a Community Based Lending Organization, including application fees, commitment fees and loan guarantee fees related to the Business Loans made to borrowers by the Community Based Lending Organization and (ii) interest income earned on the portion of the Program funds held by the Community Based Lending Organization (whether such funds are undisbursed Program funds or are repayment proceeds of Business Loans made by the Community Based Lending Organization).

c) "Business Loan" shall mean a loan made by a Community Based Lending Organization to an Eligible Business for an Eligible Project that is either a Micro-Loan or a Regular Loan.

d) "Community Based Lending Organizations" shall mean community development financial institutions, small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.

e) "Community Development Financial Institution" or "CDFI" shall mean a community based organization that provides financial services and products to communities, businesses and people underserved by traditional financial institutions.

f) "Corporation" shall mean the New York State Urban Development Corporation d/b/a Empire State Development Corporation, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York created by Chapter one hundred seventy-four of the Laws of nineteen hundred sixty-eight, as amended.

g) "Eligible Businesses" shall have the meaning given in Section 4250.3 below.

h) "Eligible Project" shall have the meaning given in Section 4250.3 below.

i) "Eligible Uses" shall have the meaning given in Section 4250.4 below.

j) "Ineligible Businesses" shall mean newspapers, broadcasting, or other news media; medical facilities, libraries, community or civic centers. It also means any business relocating from one municipality with the State to another, except when the business is relocating within a municipality with a population of at least one million and the governing body of the municipality approves or each municipality from which such business operation will be relocated agrees to such relocation.

k) "Ineligible Projects" shall mean any project that is not an Eligible Project, including, without limiting the foregoing, public infrastructure improvements and funding for providing payment or distribution as a loan to owners, members and partners or shareholders of the applicant business or their family members.

l) "Loan Fund" shall mean the Small Business Revolving Loan Fund created by the Small Business Revolving Loan Fund Legislation.

m) "Loan Fund Account" shall mean each and every account estab-

lished by the Community Based Lending Organization for the purpose of depositing Program funds.

n) "Loan Fund Legislation" shall mean Section 16-t of the Act.
o) "Loan Fund Proceeds" shall mean any and all monies made available to the Corporation for deposit to the Loan Fund, including monies appropriated by the State and any income earned by, or incremental to, the amount due to the investment of the same, or any repayment of monies advanced from the Loan Fund.

p) "Micro-Loan" shall mean a Small Business loan that has a principal amount that is less than or equal to twenty-five thousand dollars.

q) "Minority Business Enterprise" shall mean a business enterprise which is at least fifty-one percent owned, or in the case of a publicly-owned business at least fifty-one percent of the common stock or other voting interests of which is owned, by one or more minority persons and such ownership must have and exercise the authority to independently control the day to day business decisions of the entity. Minority persons shall mean persons who are:

1. Black;
2. Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent or either Indian or Hispanic origin, regardless of race;
3. Asian and Pacific Islander persons having origins in the Far East, Southeast Asia, the Indian sub-continent or the Pacific Islands; or
4. American Indian or Alaskan Native persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

r) "Program Loan Fund Agreement" shall mean the agreement between the Corporation and the Community Based Lending Organization pursuant to which the Program funds will be disbursed to and used by the Community Based Lending Organization.

s) "Program Loan" shall mean a loan made by the Corporation to a Community Based Lending Organization.

t) "Regular Loan" shall mean a Small Business loan that has a principal amount greater than twenty-five thousand dollars.

u) "Service Delivery Area" shall mean one or more contiguous counties or municipalities to be served by the Community Based Lending Organization and described in the Program Loan Fund Agreement between the Corporation, as lender, and the Community Based Lending Organization, as borrower.

v) "Small Business" shall mean a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis.

w) "State" shall mean the State of New York.

x) "Women Business Enterprise" shall mean a business enterprise that is at least fifty one percent owned, or in the case of a publicly-owned business at least fifty one percent of the common stock or other voting interests of which is owned, by United States citizens or permanent resident aliens, one or more who are women, regardless of race or ethnicity, and such ownership interest is real, substantial and continuing and such woman or women have and exercise the authority to independently control the day to day business decisions of the enterprise.

y) "Working Capital Loans" shall mean short and medium term loans for working capital, revolving lines of credit and seasonal inventory loans made by Community Based Lending Organizations to Eligible Businesses for Eligible Projects.

Section 4250.3 Eligible Business, Eligible Projects and Ineligible Projects.

Business Loans shall be offered by Community Based Lending Organizations on the terms and conditions that are in accordance with and subject to the Act and the provisions of this Part. Business Loans shall be provided by the Community Based Lending Organization only to Eligible Businesses for Eligible Projects and shall not be used for Ineligible Projects. The terms "Eligible Business", "Eligible Projects" and "Ineligible Projects" are defined as follows.

An "Eligible Business" is a:

1. business enterprise that is resident in and authorized to do business in New York State,
2. independently owned and operated,
3. not dominant in its field, and
4. employs one hundred or fewer persons.

An "Eligible Project" is a Business Loan from a Community Based Lending Organization to an Eligible Business in the Service Delivery Area for an Eligible Use, whereby the Community Based Lending Organization has reviewed every Business Loan application to determine the feasibility of the proposed Eligible Use(s) of the financing requested by the small business applicant, the likelihood of repayment, and the potential that the loan will generate economic development and jobs within the State. An "Eligible Project" cannot be an "Ineligible Project" as defined below.

An "Ineligible Project" shall mean: (i) a project or use that would result in the relocation of any business operation from one municipality within the state to another, except under one of the following conditions, (A) When a business is relocating within a municipality with a population of at least one million where the governing body of such municipality approves such relocation, or (B) each municipality from which such business operation will be relocated has consented to such relocation; (ii) projects with respect to newspapers, broadcasting or other news media, medical facilities, libraries, community or civic centers, and public infrastructure improvements; (iii) providing funds, directly or indirectly, for payments, distribution or as a loan (except in the case of a loan to a sole proprietor for business use), to owners, members, partners or shareholders of the applicant business, except as ordinary income for services rendered; (iv) any project that results in a Business Loan to a person who is a member of the board or other governing body, officer, employee, or member of a loan committee, or a family member of the Community Based Lending Organization or who shall participate in any decision on the use of Program funds if such person is a party to or has a financial or personal interest in such loan.

Section 4250.4 Eligible Uses.

Eligible Uses of Program funds by a Small Business borrower of the Community Based Lending Organization are:

1. working capital;
2. acquisition and/ or improvement of real property;
3. acquisition of machinery and equipment; and
4. refinancing of debt obligations provided that:
 - a. it does not refinance a loan already in the portfolio of the Community Based Lending Organization;
 - b. the refinanced loan will provide a tangible benefit to the business borrower as determined by the Corporation in writing; and
 - c. the aggregate of the principal of all borrower refinancing loan amounts in the Community Based Lending Organization's Program loan portfolio is not greater than twenty-five percent (25%) of the principal amount of the Corporation's Program loan to the Community Based Lending Organization.

Section 4250.5 Fees.

A Community Based Lending Organization may charge application, commitment and loan guarantee fees pursuant to a schedule of fees adopted by the institution and approved in writing by the Corporation.

Section 4250.6 Niagara, St. Lawrence, Erie, and Jefferson Counties.

Notwithstanding anything to the contrary in this rule, the Corporation shall provide at least five hundred thousand dollars in Program funds to Community Based Lending Organizations for the purpose of making loans to small businesses located in each of the following counties: Niagara, St. Lawrence, Erie and Jefferson.

Section 4250.7 Business Loan Types and Limits.

a) There shall be two categories of Business Loans to Eligible Businesses:

1. a microloan that shall have a principal amount that is less than twenty-five thousand dollars; and
 2. a regular loan that shall have a principal amount not less than twenty-five thousand dollars.
- b) The Program funds amount used by the Community Based Lending Organization to fund a Business Loan shall not be more than fifty percent of the principal amount of such loan and shall not be greater than one hundred and twenty-five thousand dollars.

c) No less than ten percent (10%) of the aggregate Program funds shall be allocated by the Corporation for Microloans.

Section 4250.8 General Evaluation Criteria.

a) In addition to such criteria as may be set forth by the Corporation from time to time in solicitations for applications from Community Based Lending Organizations, the Corporation shall evaluate the Program assistance application of a Community Based Lending Organization in conformance with the Act and in accordance with the criteria set forth in this Part, including as applicable:

1. The ability of the Community Based Lending Organization to analyze small business applications for Business Loans, to evaluate the credit worthiness of small businesses, and to monitor and service Business Loans.
2. The ability of the Community Based Lending Organization to review every Business Loan application in order to determine, among other things, the feasibility of the proposed Eligible Use(s) of the financing requested by the small business applicant, the likelihood of repayment, and the potential that the loan will generate economic development and jobs within the State.
3. The ability of the Community Based Lending Organization to target and market to Minority and Women-Owned Enterprises and other small businesses that are having difficulty accessing traditional credit markets.

b) The Corporation is authorized, within available appropriations, to

provide low interest loans to community development financial institutions, in order to provide funding for those lending organizations' loans to small businesses, located within New York State, that generate economic growth and job creation within New York State but that are unable to obtain adequate credit or adequate terms for such credit. If the use of a community development financial institution is not practicable based upon an assessment of geographic and administrative capacity and other factors as determined by the Corporation, then the Corporation is authorized, within available appropriations, to provide low interest loans to the following other local community based lending organizations: small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.

Section 4250.9 General Requirements.

a) Program funds shall be disbursed to a Community Based Lending Organization by the Corporation in the form of a Program Loan.

1. The term of the Program Loan shall commence upon closing of the Program Loan Fund Agreement between the Corporation and the Community Based Lending Organization.

2. The Program Loan shall carry a low interest rate determined by the Corporation based on then prevailing interest rates and the circumstances of the Community Based Lending Organization.

b) Notwithstanding the performance of the Business Loans made by the Community Based Lending Organization using Program funds, the Community Based Lending Organization shall remain liable to the Corporation with respect to any unpaid amounts due from the Community Based Lending Organization pursuant to the terms of the Corporation's Program Loan to the Community Based Lending Organization.

c) At the discretion of the Corporation, a portion of Program loan funds may be disbursed to the Community Based Lending Organization in the form of a grant or forgivable loan provided that those funds are used by the Community Based Lending Organization for administrative expenses associated with Business Loans to Eligible Borrowers for Eligible Projects, loan-loss reserves, or other eligible expenses as may be approved in writing by the Corporation.

d) Notwithstanding any provision of law to the contrary, the Corporation may establish a Program fund for Program use and pay into such fund any funds available to the Corporation from any source that are eligible for Program use, including moneys appropriated by the State.

e) Interest received by the Corporation from Program Loans to Community Based Lending Organizations may be used at the discretion of the Corporation for Program Loans and the management, marketing, and administration of the Program.

f) If the use of a community development financial institution is not practicable based upon an assessment of geographic and administrative capacity and other factors as determined by the Corporation, then the Corporation is authorized, within available appropriations, to provide low interest loans to the following other local community based lending organizations: small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks.

Section 4250.10 Loan Fund Accounts.

Each Community Based Lending Organization shall deposit Program funds awarded by the Corporation, repayments, and interest earned into a bank account in a State or Federal chartered banking institution.

Section 4250.11 Application and Approval Process.

The Corporation shall identify eligible Community Based Lending Organizations through one or more competitive statewide or local solicitations.

Section 4250.12 Auditing, Compliance and Reporting.

a) The Community Based Lending Organization shall submit to the Corporation annual reports and additional reports as requested at the discretion of the Corporation stating:

1. The number of Business Loans made;
2. The amount of each Business Loan;
3. The amount of Program Loan proceeds used to fund each Business Loan;

4. The use of Business Loan proceeds by the borrower;
5. The number of jobs created or retained;
6. A description of the economic development generated;
7. The status of each outstanding Business Loan; and
8. Such other information as the Corporation may require.

b) The Corporation may conduct audits of the Community Based Lending Organization in order to ensure compliance with the provisions of this section, any regulations promulgated with respect thereto and agreements between the Community Based Lending Organization and the Corporation of all aspects of the use of Program funds and Business Loan transactions.

c) In the event that the Corporation finds substantive noncompliance, the Corporation may terminate the Community Base Lending Organization's participation in the Program.

d) Upon termination of a Community Based Lending Organization's participation in the Program, the Community Based Lending Organization shall return to the Corporation, promptly after its demand thereof, all Program fund proceeds held by the Community Based Lending Organization; and provide to the Corporation, promptly after its demand thereof, an accounting of all Program funds received by the Community Based Lending Organization, including all currently outstanding Business Loans that were made using Program funds. Notwithstanding such termination, the Community Based Lending Organization shall remain liable to the Corporation with respect to any unpaid amounts due from the Community Based Lending Organization pursuant to the terms of the Corporation's loans to the Community Based Lending Organization.

e) In the event that a Community Based Lending Organization's participation in the Program is terminated, the Corporation, in its discretion, can reassign all or part of the award made to such Community Based Lending Organization to one or more Community Based Lending Organizations that are already administering the Program and that serve the same Service Area or portions thereof without an additional solicitation.

Section 4250.13 Confidentiality.

a) To the extent permitted by law, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from the Loan Fund administered through the selected Community Based Lending Organizations by the Corporation, shall be confidential and exempt from public disclosures.

b) To the extent permitted by law, no full time employee of the State of New York or any agency, department, authority or public benefit corporation thereof shall be eligible to receive assistance under this Program.

Section 4250.14 Non-Discrimination and Affirmative Action.

The Corporation's affirmative action and non-discrimination policies and programs are grounded in both public policy and applicable law, including but not limited to, Section 2879 of the Public Authorities Law, Article 15-A of the Executive Law and Section 6254 (11) of the Unconsolidated Laws. These laws mandate the Corporation to take affirmative action in implementing programs. The Corporation has charged the affirmative action department with overall responsibility to ensure that the spirit of these mandates is incorporated into the Corporation's policies and projects. Where applicable, the affirmative action department will work with applicants in developing an appropriate Affirmative Action Program for business and employment opportunities generated by the Corporation's participation of the Program.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 7, 2011.

Text of rule and any required statements and analyses may be obtained from: Antovk Pidedjian, Sr. Counsel, New York State Urban Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10017, (212) 803-3792, email: apidedjian@empire.state.ny.us

Regulatory Impact Statement

1. Statutory Authority: Section 9-c of the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968, as amended (the "Act"), provides, in part, that the Corporation shall, assisted by the Commissioner of Economic Development and in consultation with the Department of Economic Development, promulgate rules and regulations in accordance with the State Administrative Procedure Act.

Section 16-t of the Act provides for the creation of the Small Business Revolving Loan Fund (the "Program") and authorizes the New York State Urban Development Corporation d/b/a Empire State Development Corporation (the "Corporation"), within available appropriations, to provide low interest loans to Community Development Financial Institutions and other Community Based Lending Organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit.

2. Legislative Objectives: Section 16-t of the Act sets forth the legislative objective of authorizing the Corporation, within available appropriations, to provide low interest loans to community development financial institutions and other community based lending organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. The adoption of 21 NYCRR Part 4250 will further these goals by setting forth the types of available assistance, evaluation criteria, the application process and related matters for the Program.

3. Needs and Benefits: The State has allocated \$25 million to provide low interest loans to community development financial institutions and

other community based lending organizations, in order to provide funding for those organizations' loans to New York's small businesses that are unable to obtain adequate credit or adequate terms for such credit. Small businesses have been determined to be a major source of employment throughout the State. Small businesses have historically had difficulties obtaining financing or refinancing in order to remain competitive and grow their operations, and the current economic difficulties have exacerbated this problem. Providing loans to small businesses should sustain and potentially increase the employment provided by such businesses, especially during this period of historically high unemployment and underemployment. The Program (i) allows the Corporation to evaluate the effectiveness of community based lending organizations with respect to their ability to make loans to credit worthy small businesses, (ii) decentralizes to community based lending organizations the evaluation of the credit and operations of small businesses within the respective communities served by such organizations, and (iii) enhances the ability of community based lending organizations to make loans to small businesses in the communities served by such organizations. The rule facilitates these aspects of the Program by providing for a competitive process to select community based financial institutions for Program Loans and defining eligible and ineligible small businesses and eligible uses of the proceeds of loans to small businesses and other criteria to be applied by the community development financial institutions in making loans to small businesses.

4. Costs: The Program is funded by a State appropriation in the amount of twenty-five million dollars. Pursuant to the rule, community based lending organizations must provide not less than fifty percent of the principal amount of each small business loan funded with Program funds. The costs to a community based lending organization involved in the Program would depend on the extent to which they participate in the Program and their effectiveness and efficiency in making small business loans. The rule also provides for approval by the Corporation of fees charged by a community based lending institutions in connection with loans to small businesses that use Program funds.

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule on community based lending organizations participating in the Program except those required by the statute creating the Program such as an annual report on the organization's lending activity and providing information in connection with an audit by the Corporation with respect to the organization's use of Program funds. Standard applications and loan documents used for most other assistance by the Corporation will be employed in keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients.

6. Local Government Mandates: The Program imposes no mandates - program, service, duty, or responsibility - upon any city, county, town, village, school district or other special district.

7. Duplication: The regulations do not duplicate any existing state or federal rule.

8. Alternatives: While larger financial institutions can potentially provide small business financing and the community based lending organizations already provide small business financing, the State has established the Program in order to enhance the access of small businesses to such financing, and the proposed rule provides the regulatory basis for providing low interest loans to community based lending organizations for lending to small businesses in accordance with the statutory requirements of the Program.

9. Federal Standards: There are no minimum federal standards related to this regulation. The regulation is not inconsistent with any federal standards or requirements.

10. Compliance Schedule: The regulation shall take effect immediately upon adoption.

Regulatory Flexibility Analysis

1. Effects of Rule: In the rule: "Small business" is defined as a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis; "Community Development Financial Institution" is defined as community based organization that provides financial services and products to communities, businesses and people underserved by traditional financial institutions; and "Community Based Lending Organizations" is defined as Community Development Financial Institutions, small business lending consortia, certified development companies, providers of United States Department of Agriculture business and industrial guaranteed loans, United States Small Business Administration loan providers, credit unions and community banks. The rule will facilitate the statutory Program's purpose of having New York State Urban Development Corporation d/b/a Empire State Development Corporation (the "Corporation") make low interest loans to community based lending organizations in order to provide funding for those lending organizations' loans (including microloans in principal amounts equal to or less than twenty-five thousand dollars) to small businesses, located

within the State, that are unable to obtain adequate credit or credit terms for such credit.

2. Compliance Requirements: There are no compliance requirements for small businesses and local governments in these regulations.

3. Professional Services: Applicants do not need to obtain professional services to comply with these regulations.

4. Compliance Costs: There are no compliance costs for small businesses and local governments in these regulations.

5. Economic and Technological Feasibility: There are no compliance costs for small businesses and local governments in these regulations so there is no basis for determining the economic and technological feasible for compliance with the rule by small businesses and local governments.

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide low interest loans to community based lending organizations in order to enhance the ability of such organizations to fund loans to small businesses.

7. Small Business and Local Government Participation: A number of community based lending organizations that engage in lending to small businesses responded to a survey circulated by the Corporation regarding implementation of the program as reflected in the rule.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: Community development financial institutions and other community based lending organizations serving all of the 44 counties defined as rural by the Executive Law § 481(7), are eligible to apply for the Small Business Revolving Loan Fund (the "Program") assistance pursuant to a State-wide request for proposals.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements other than those that would be required of any community based lending organization receiving a similar loan regarding such matters as financial condition, required matching funds, and utilization of Program funds, and the statutorily required annual report on the use of Program funds; no affirmative acts will be needed to comply other than the said reporting requirements and the making of loans to small businesses in the normal course of the business for any community based lending organization that receives Program assistance; and, it is not anticipated that applicants will have to secure any professional services in order to comply with this rule.

3. Costs: The costs to community based lending organizations that participate in the Program would depend on the extent to which they choose to participate in the Program, including the amount of required matching funds for their Program loans to small businesses and the administrative costs in connection with such small business loans and the fees, if any, charged to small businesses in connection with loans to such businesses that include Program funds.

4. Minimizing Adverse Impact: The purpose of the Program is to provide loans to community based lending organizations in order to enhance the ability of these entities to make loans to small businesses, especially those small businesses that may not be able to borrow funds at acceptable rates from larger financial institutions. This rule provides a basis for cooperation between the State and CBLOs, including CBLO that serve rural areas of the State, in order to maximize the Program's effectiveness and minimize any negative impacts for such CBLO and the small businesses, including small businesses located in rural areas of the State, that such CBLOs serve.

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those located only in urban areas or only in rural areas. A number of CBLOs that engage in lending to rural and urban small businesses responded to a survey circulated by the Corporation regarding implementation of the Program. Their comments were considered in the rulemaking process.

Job Impact Statement

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of New York by providing greater access to capital for main street everyday small businesses. The Program is targeted to minorities, women and other New Yorkers who have difficulty accessing regular credit markets.

There will be no adverse impact on job opportunities in the state.