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

Empire Zones Reform

I.D. No. EDV-13-16-00003-E
Filing No. 279
Filing Date: 2016-03-11
Effective Date: 2016-03-11

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; 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 June 8, 2016.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 625 Broadway, Albany NY 12245, (518) 292-5123, email: tregan@esd.ny.gov

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 facilitate 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 businesses 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

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

Annual Professional Performance Reviews (APPR) of Classroom Teachers and Building Principals

I.D. No. EDU-52-15-00017-ERP

Filing No. 281

Filing Date: 2016-03-14

Effective Date: 2016-03-14

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

Action Taken: Addition of sections 30-2.14 and 30-3.17 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1), (2), 3009(1), 3012-c and 3012-d; L. 2015, ch. 20, subpart C, section 3; L. 2015, ch. 56, part EE, subpart E, sections 1 and 2

Finding of necessity for emergency rule: Preservation of public safety.

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement the recommendations of the Common Core Task Force which were released on December 10, 2015. The Task Force recommended that until the new Learning Standards and State assessments are fully phased in, the results from the State assessments (Grades 3-8 English language arts and mathematics) and the use of any State-provided growth model based on these tests or other State assessments shall not have evaluative consequence for teachers or students.

A Notice of Proposed Rule Making was published in the State Register on December 30, 2015. Based on feedback received from the field, the proposed amendment was revised and a Notice of Revised Rule Making will be published in the State Register on March 30, 2016. Since the Board of Regents meets at fixed intervals, the earliest the revised rule can be presented for regular (non-emergency) adoption, after expiration of the required 30-day public comment period provided for a revised rulemaking pursuant to the State Administrative Procedure Act (SAPA) would be the May Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the May meeting, would be June 1, 2016, the date a Notice of Adoption would be published in the State Register.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed amendment is adopted by emergency action to ensure that teachers and principals receive transition scores and ratings for the 2015-2016 school year in accordance with the proposed amendment and that the results of the State assessments (grades 3-8 English language arts and mathematics) and State-provided growth scores

based on Regents examinations are not used for evaluative purposes in the 2015-2016 school year through the 2018-2019 school year and so school districts are able to complete their negotiations for annual professional performance reviews conducted under Education Law § 3012-d, which for State aid purposes must be completed by September 1, 2016. Emergency action is also necessary to ensure that the proposed rule adopted at the December 2015 meeting, which has been subsequently revised, remains continuously in effect until it can be adopted as a permanent rule.

Subject: Annual Professional Performance Reviews (APPR) of classroom teachers and building principals.

Purpose: To implement the recommendations of the New York Common Core Task Force Report by establishing transition ratings for teachers and building principals during a four-year transition period for APPRs, while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model.

Text of emergency/revised rule: A new section 30-2.14 of the Rules of the Board of Regents is added, effective March 14, 2016, to read as follows:

§ 30-2.14. Annual Professional Performance Review Scores and Ratings for the 2015-16 School Year During a Transition to Higher Learning Standards.

(a) For purposes of this section, State assessments shall mean the grades 3-8 English language arts and mathematics State assessments.

(b) Notwithstanding any other provision of this Part to the contrary, the Commissioner shall establish procedures in guidance for transition scores and ratings for teachers and principals whose annual professional performance reviews conducted pursuant to Education Law § 3012-c and this Subpart for the 2015-2016 school year are based, in whole or in part, on State assessments and/or on State-provided growth scores on Regents examinations during a transition period while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model.

(1) State-provided growth scores will continue to be calculated pursuant to this Subpart for advisory purposes only during this transition period and teachers and principals will continue to receive an overall score and rating calculated pursuant to this Subpart.

(2) For the transition period, an overall composite transition score and rating shall be generated based on the scores and ratings on the remaining subcomponents of the annual professional performance review that are not based on State assessments and/or a State-provided growth score on Regents examinations. The overall composite transition score shall include the use of any back-up SLOs developed by the district/BOCES in lieu of the State-provided growth score on State assessments; provided that such back-up SLOs shall not be based on State assessments.

(c) Except as otherwise provided in subdivision (d) of this section, a teacher's or principal's final composite score and rating, for all purposes under section 3012-c of the Education Law or this Subpart as well as for purposes of tenure determinations and other employment decisions and proceedings pursuant to Education Law §§ 3020-a and 3020-b, shall be the transition composite score and rating. The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's transition composite score and rating.

(d) For purposes of public reporting of aggregate data and disclosure to parents pursuant to paragraph b of subdivision 10 of section 3012-c of the Education Law, the original composite score and rating pursuant to section 3012-c of the Education Law of this Subpart shall be reported with (i) the transition composite score and rating and (ii) an explanation of such transition composite score and rating.

A new section 30-3.17 of the Rules of the Board of Regents is added, effective March 14, 2016, to read as follows:

§ 30-3.17. Annual Professional Performance Review Ratings for the 2015-2016 through the 2018-2019 school years for Annual Professional Performance Reviews Conducted Pursuant to Education Law § 3012-d and this Subpart, During a Transition to Higher Learning Standards.

(a) For purposes of this section, State assessments shall mean the grades 3-8 English language arts and mathematics State assessments.

(b) Notwithstanding any other provision of this Subpart to the contrary, the Commissioner shall establish procedures in guidance for determining transition scores and ratings for teachers and principals whose annual professional performance reviews conducted pursuant to Education Law § 3012-d and this Subpart for the 2015-2016 through the 2018-2019 school years are based, in whole or in part, on State assessments and/or State-provided growth scores on Regents examinations, while the State completes the transition to higher learning standards through new State assessments aligned to higher learning standards, and a revised State-provided growth model.

(1) State-provided growth scores will continue to be calculated for advisory purposes only pursuant to this Part during this transition period and teachers and principals will continue to receive an overall rating calculated pursuant to this Subpart.

(2) In addition, during this transition period, the Commissioner may also authorize the use of one or more State-provided growth model(s) that take into consideration multiple years of student growth on State assessments to compute scores in the required subcomponent of the student performance category, for advisory purposes only under this section.

(3) During the transition period, a transition score and rating on the student performance category, and a transition rating that incorporates the student performance category rating shall be generated based on:

(i) the scores/ratings in the subcomponents of the student performance category that are not based on State assessments and/or a State-provided growth score on Regents assessments; and

(ii) for the 2016-2017 through 2018-2019 school years, in instances where no scores/ratings in the subcomponents of the student performance category can be generated, notwithstanding any other provision of this Subpart to the contrary, a SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.

(c) Except as otherwise provided in subdivision (d) of this section, a teacher's or principal's final composite rating for all purposes under section 3012-d of the Education Law or under this Subpart, as well as for purposes of tenure determinations, individual employment records, and other employment decisions and proceedings pursuant to Education Law § 3020-b, shall be the overall transition rating. The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's overall transition composite rating.

(d) For purposes of public reporting of aggregate data and disclosure to parents pursuant to paragraph b of subdivision 10 of section 3012-c of the Education Law as made applicable to this Subpart, the original composite rating pursuant to section 3012-d of the Education Law and this Subpart shall be reported with (i) the overall transition rating and (ii) an explanation of such overall transition rating.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on December 30, 2015, I.D. No. EDU-52-15-00017-EP. The emergency rule will expire May 12, 2016.

Emergency rule compared with proposed rule: Substantial revisions were made in section 30-3.17(b)(3) and (c).

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, Office of Higher Education, Room 979 EBA, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: regcomments@nysed.gov

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on December 30, 2015, the following substantial revisions were made to the proposed rule:

Section 30-3.17(b)(3) was amended to clarify that in instances where no scores/ratings in the subcomponents of the student performance category can be generated, notwithstanding any other provision of this Subpart to the contrary, a SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments for the 2016-2017 school year through the 2018-2019 school year (and not the 2015-2016 school year).

Section 30-3.17(c) was amended to specifically state that only the transition scores and ratings will be reported on individual employment records during the four-year transition period.

The above revisions to the proposed rule require revisions to the Needs and Benefits section of the previously published Regulatory Impact Statement as follows:

3. NEEDS AND BENEFITS:

In September 2015, Governor Andrew Cuomo formed the Common Core Task Force to undertake a comprehensive review of the current status and use of the Common Core State Standards and assessments in New York and to recommend potential reforms to the system. Following multiple meetings, the Task Force reviewed and discussed information presented at public sessions and submitted through the website, and has made a number of recommendations regarding the implementation of the Common Core Standards.

On December 10, 2015, the Task Force released their report, affirming that New York must have rigorous, high quality education standards to

improve the education of all of our students and hold our schools and districts accountable for students' success but recommended that the Common Core standards be thoroughly reviewed and revised consistent as reflected in the report and that the State assessments be amended to reflect such revisions. In addition, the Task Force recommended that until the new system is fully phased in, the results from the grades 3-8 English language arts and mathematics State assessments and the use of any State-provided growth model based on these tests or other State assessments shall not have consequence for teachers or students. Specifically, Recommendation 21 from the Task Force's Final Report ("Report") provides as follows:

"…State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers. The transition phase shall last until the start of the 2019-2020 school year".

Proposed amendment

In an effort to implement the Task Force's recommendation, the proposed amendment makes the following changes:

• Two new sections 30-2.14 and 30-3.17 are added to provide for a four year transition period for annual professional performance reviews (APPRs) while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model. During the transition period, the Commissioner will determine transition scores and ratings that will replace the original scores and HEDI ratings computed under the existing provisions of Subpart 30-2 and 30-3 of the Regents Rules for evaluation of teachers and principals whose APPRs are based, in whole or in part, on State assessments in grades 3-8 ELA and mathematics assessments and State-provided growth scores on Regents examinations. The transition period will end with the 2018-2019 school year.

• Section 30-2.14 relates to evaluations under Education Law § 3012-c and Subpart 30-2 of the Regents Rules and applies to evaluations for the 2015-2016 school year only, as school districts conduct the negotiations necessary to come into compliance with new Education Law § 3012-d. Section 30-3.17 relates to evaluations under Education Law § 3012-d, and applies to evaluations for the 2015-2016 through the 2018-2019 school year.

• During the transition period, transition scores and HEDI ratings will replace the scores and HEDI ratings for teachers and principals whose HEDI scores are based, in whole or in part, on State assessments in grades 3-8 ELA or mathematics (including where State-provided growth scores are used) or on State-provided growth scores on Regents examinations.

• In the case of evaluations conducted pursuant to Education Law § 3012-c and new § 30-2.14, the overall transition scores and ratings will be determined based upon the remaining subcomponents of the annual professional performance review that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations.

• In the case of evaluations pursuant to Education Law § 3012-d and new § 30-3.17, transition scores and ratings for the student performance category and the overall transition rating will be determined using the scores/ratings in the subcomponents of the student performance category that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations or, in instances where no scores/ratings in the subcomponents of the student performance category can be generated, for the 2016-2017 school year through the 2018-2019 school year, a back-up SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.

• State provided growth scores will continue to be computed for advisory purposes only and overall HEDI ratings will continue to be provided to teachers and principals based on such growth scores. However, during the transition period, only the transition score and rating will be used for purposes of Education Law §§ 3012-c and 3012-d and Subparts 30-2 and 30-3, and for purposes of employment decisions, including tenure determinations, individual employment records and for purposes of proceedings under Education Law §§ 3020-a and 3020-b and teacher and principal improvement plans.

• However, for purposes of public reporting of aggregate data and disclosure to parents pursuant to subdivision 10 of section 3012-c of the Education Law, the original composite score and rating and the transition composite score and rating must be reported with an explanation of such transition composite score and rating.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on December 30, 2015, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement herewith.

The above revisions to the proposed rule require revisions to the Compliance Requirements section of the Local Governments section of the previously published Regulatory Flexibility Analysis as follows:

2. COMPLIANCE REQUIREMENTS:

In September 2015, Governor Andrew Cuomo formed the Common Core Task Force to undertake a comprehensive review of the current status and use of the Common Core State Standards and assessments in New York and to recommend potential reforms to the system. Following multiple meetings, the Task Force reviewed and discussed information presented at public sessions and submitted through the website, and has made a number of recommendations regarding the implementation of the Common Core Standards.

On December 10, 2015, the Task Force released their report, affirming that New York must have rigorous, high quality education standards to improve the education of all of our students and hold our schools and districts accountable for students' success but recommended that the Common Core standards be thoroughly reviewed and revised consistent as reflected in the report and that the State assessments be amended to reflect such revisions. In addition, the Task Force recommended that until the new system is fully phased in, the results from the grades 3-8 English language arts and mathematics State assessments and the use of any State-provided growth model based on these tests or other State assessments shall not have consequence for teachers or students. Specifically, Recommendation 21 from the Task Force's Final Report ("Report") provides as follows:

"…State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers. The transition phase shall last until the start of the 2019-2020 school year".

Proposed amendment

In an effort to implement the Task Force's recommendation, the proposed amendment makes the following changes:

• Two new sections 30-2.14 and 30-3.17 are added to provide for a four year transition period for annual professional performance reviews (APPRs) while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model. During the transition period, the Commissioner will determine transition scores and ratings that will replace the original scores and HEDI ratings computed under the existing provisions of Subpart 30-2 and 30-3 of the Regents Rules for evaluation of teachers and principals whose APPRs are based, in whole or in part, on State assessments in grades 3-8 ELA and mathematics assessments and State-provided growth scores on Regents examinations. The transition period will end with the 2018-2019 school year.

• Section 30-2.14 relates to evaluations under Education Law § 3012-c and Subpart 30-2 of the Regents Rules and applies to evaluations for the 2015-2016 school year only, as school districts conduct the negotiations necessary to come into compliance with new Education Law § 3012-d. Section 30-3.17 relates to evaluations under Education Law § 3012-d, and applies to evaluations for the 2015-2016 through the 2018-2019 school year.

• During the transition period, transition scores and HEDI ratings will replace the scores and HEDI ratings for teachers and principals whose HEDI scores are based, in whole or in part, on State assessments in grades 3-8 ELA or mathematics (including where State-provided growth scores are used) or on State-provided growth scores on Regents examinations.

• In the case of evaluations conducted pursuant to Education Law § 3012-c and new § 30-2.14, the overall transition scores and ratings will be determined based upon the remaining subcomponents of the annual professional performance review that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations.

• In the case of evaluations pursuant to Education Law § 3012-d and new § 30-3.17, transition scores and ratings for the student performance category and the overall transition rating will be determined using the scores/ratings in the subcomponents of the student performance category that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations or, in instances where no scores/ratings in the subcomponents of the student performance category can be generated, for the 2016-2017 school year through the 2018-2019 school year, a back-up SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.

• State provided growth scores will continue to be computed for advisory purposes only and overall HEDI ratings will continue to be provided to teachers and principals based on such growth scores. However, during

the transition period, only the transition score and rating will be used for purposes of Education Law §§ 3012-c and 3012-d and Subparts 30-2 and 30-3, and for purposes of employment decisions, including tenure determinations, individual employment records and for purposes of proceedings under Education Law §§ 3020-a and 3020-b and teacher and principal improvement plans.

• However, for purposes of public reporting of aggregate data and disclosure to parents pursuant to subdivision 10 of section 3012-c of the Education Law, the original composite score and rating and the transition composite score and rating must be reported with an explanation of such transition composite score and rating.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on December 30, 2015, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement herewith.

The above revisions to the proposed rule require revisions to the Reporting, Recordkeeping, and Other Compliance Requirements, and Professional Services section of the previously published Rural Area Flexibility Analysis as follows:

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

In September 2015, Governor Andrew Cuomo formed the Common Core Task Force to undertake a comprehensive review of the current status and use of the Common Core State Standards and assessments in New York and to recommend potential reforms to the system. Following multiple meetings, the Task Force reviewed and discussed information presented at public sessions and submitted through the website, and has made a number of recommendations regarding the implementation of the Common Core Standards.

On December 10, 2015, the Task Force released their report, affirming that New York must have rigorous, high quality education standards to improve the education of all of our students and hold our schools and districts accountable for students' success but recommended that the Common Core standards be thoroughly reviewed and revised consistent as reflected in the report and that the State assessments be amended to reflect such revisions. In addition, the Task Force recommended that until the new system is fully phased in, the results from the grades 3-8 English language arts and mathematics State assessments and the use of any State-provided growth model based on these tests or other State assessments shall not have consequence for teachers or students. Specifically, Recommendation 21 from the Task Force's Final Report ("Report") provides as follows:

"…State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers. The transition phase shall last until the start of the 2019-2020 school year".

Proposed amendment

In an effort to implement the Task Force's recommendation, the proposed amendment makes the following changes:

• Two new sections 30-2.14 and 30-3.17 are added to provide for a four year transition period for annual professional performance reviews (APPRs) while the State completes the transition to higher learning standards through new State assessments aligned to the higher learning standards, and a revised State-provided growth model. During the transition period, the Commissioner will determine transition scores and ratings that will replace the original scores and HEDI ratings computed under the existing provisions of Subpart 30-2 and 30-3 of the Regents Rules for evaluation of teachers and principals whose APPRs are based, in whole or in part, on State assessments in grades 3-8 ELA and mathematics assessments and State-provided growth scores on Regents examinations. The transition period will end with the 2018-2019 school year.

• Section 30-2.14 relates to evaluations under Education Law § 3012-c and Subpart 30-2 of the Regents Rules and applies to evaluations for the 2015-2016 school year only, as school districts conduct the negotiations necessary to come into compliance with new Education Law § 3012-d. Section 30-3.17 relates to evaluations under Education Law § 3012-d, and applies to evaluations for the 2015-2016 through the 2018-2019 school year.

• During the transition period, transition scores and HEDI ratings will replace the scores and HEDI ratings for teachers and principals whose HEDI scores are based, in whole or in part, on State assessments in grades 3-8 ELA or mathematics (including where State-provided growth scores are used) or on State-provided growth scores on Regents examinations.

• In the case of evaluations conducted pursuant to Education Law § 3012-c and new § 30-2.14, the overall transition scores and ratings will be determined based upon the remaining subcomponents of the annual professional performance review that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations.

• In the case of evaluations pursuant to Education Law § 3012-d and new § 30-3.17, transition scores and ratings for the student performance category and the overall transition rating will be determined using the scores/ratings in the subcomponents of the student performance category that are not based on the grade 3-8 ELA or mathematics State assessments and/or a State-provided growth score on Regents examinations or, in instances where no scores/ratings in the subcomponents of the student performance category can be generated, for the 2016-2017 school year through the 2018-2019 school year, a back-up SLO shall be developed by the district/BOCES consistent with guidelines prescribed by the Commissioner using assessments approved by the Department that are not State assessments.

• State provided growth scores will continue to be computed for advisory purposes only and overall HEDI ratings will continue to be provided to teachers and principals based on such growth scores. However, during the transition period, only the transition score and rating will be used for purposes of Education Law §§ 3012-c and 3012-d and Subparts 30-2 and 30-3, and for purposes of employment decisions, including tenure determinations, individual employment records and for purposes of proceedings under Education Law §§ 3020-a and 3020-b and teacher and principal improvement plans.

• However, for purposes of public reporting of aggregate data and disclosure to parents pursuant to subdivision 10 of section 3012-c of the Education Law, the original composite score and rating and the transition composite score and rating must be reported with an explanation of such transition composite score and rating.

Revised Job Impact Statement

The purpose of proposed rule is necessary to implement the recommendations of the Common Core Task Force which were released on December 10, 2015. The Task Force recommended that until the new Learning Standards and State assessments are fully phased in, the results from the State assessments (Grades 3-8 English language arts and mathematics) and the use of any State-provided growth model based on these tests or other State assessments shall not have evaluative consequence for teachers or students. Because it is evident from the nature of the proposed rule 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

Since publication of a Notice of Proposed Rule Making in the State Register on December 31, 2015, the State Education Department (SED) received the following comments:

1. COMMENT:

We still need to address the over-testing and inefficiency in the testing of High School students in order to assess teachers. I work in a vocational high school, and the students have to submit to two pre-tests and post tests in addition to their curriculum based testing and licensure testing. The APPR system needs to be modified, streamlined- reconsidered. It is not in the best interest of students. Some students are forced to repeat identical tests in home schools and in BOCES programs for the purpose of data. It creates a chaotic and disheartening beginning and end to the school year, does not instill love of learning, does not exemplify humanism or good teaching and learning.

DEPARTMENT RESPONSE:

Neither Education Law § 3012-d nor Subpart 30-3 of the Rules of the Board of Regents require districts/BOCES to use pre-assessments as baseline data when setting SLO growth targets. In fact, the Department has released a number of resources to assist districts and BOCES in minimizing assessments used in APPR, including the SLO 103 webinar, available on EngageNY at: https://www.engageny.org/resource/slo-103-for-teachers which provides guidance to districts and BOCES on using historical data and past performance trends to set growth targets. On the contrary, this guidance suggests that districts/BOCES may use a student's prior academic history as the baseline and is not required to use pre-assessments.

Additionally, Teach More, Test Less Testing Transparency Reports were provided to all districts and BOCES in New York State in 2014 wherein the Department reviewed each district's/BOCES' APPR plans and notified them of places in their APPR plans where they could take local action to reduce assessments in their district/BOCES. These letters are available on the NYSED website at: http://usny.nysed.gov/rttt/test/teachers-leaders/teach-more-test-less/home.html.

Moreover, pursuant to Section 30-3.4(b)(1)(iii) of the Rules of the Board of Regents, districts or BOCES who want to avoid additional testing in their APPR plans may use SLOs based on school- or BOCES-wide, group, team or linked results from the grades 4 or 8 State Science exams

or Regents exams for grades/subjects where no State assessment or Regents exam currently exists.

2. COMMENT:

While I am appreciative of the proposed moratorium prohibiting the use of Grades 3-8 State Assessments for evaluation purposes, I am encouraging you to rethink its use at all. We can't ignore that the opt-out movement in our State was motivated by student performance being linked to teacher/principal evaluation. There is minimal evidence to support that State Assessments being linked to evaluations improve student achievement. On the other hand, having 100% participation on an appropriately designed assessment will improve instructional practice, especially when combined with an effective data analysis process. Decoupling student performance from evaluations will reverse the opt-out trend, thereby positively impacting student achievement.

DEPARTMENT RESPONSE:

Education Law § 3012-d(4)(a)(1)(a) requires that State-provided growth scores be used for evaluative purposes, where available, to provide a score and rating in the required subcomponent of the Student Performance category. Further, that same provision of the Education Law also requires that State assessments be used as the underlying evidence for Student Learning Objectives (SLOs) where they exist. A statutory amendment would be needed to permanently decouple State assessments from evaluations.

3. COMMENT:

There is a lot of discussion at the state and federal level about local control. I was disappointed that it appears that the regulations went too far and took some of that local control away. To ''forbid'' the use of 3-8 test results took an option away that my district negotiated and had approved. In good faith we negotiated building-wide growth scores K-6 based upon the 3-6 assessments and 7-12 building-wide growth scores based upon the 7-8 State Assessments and Regents Exams. I believe the Growth scores we received were the best number despite the flawed implementation of the reform agenda and despite tests that are certainly not perfect. Had the emergency regulations provided the option to use or not use results from the 3-8 tests, that would have been more in line with respecting local control, and I would have proposed to continue with our plan as is and other Districts could have chosen differently if desired.

DEPARTMENT RESPONSE:

The regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents is intended to implement Recommendation #21 of the Governor's Common Core Task Force, which was comprised of a diverse and highly qualified group of education officials, teachers, parents, the Governor and state legislative representatives. Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model." The regulation implements the recommendation of the Governor's Task Force, which was to prohibit the use 3-8 Common Core assessments for evaluative purposes. See also Response to Comment #4.

4. COMMENT:

It seems that the regulations are in conflict with the law, if the law dictates that 3-8 tests are to be administered and used. for informational purposes only at this point, what would the ramifications be from the state level if a District chose to adhere to the law as opposed to the regulations by using the 3-8 results anyway, if I am correct that there is a conflict between the two?

DEPARTMENT RESPONSE:

The Board of Regents have authority under Education Law section 207 to establish rules to carry into effect the laws and policies of the State relating to education. In this instance, subsequent to the enactment of Chapter 56 of the Laws of 2015, which enacted new § 3102-d of the Education Law to establish new requirements for annual professional performance reviews (APPRs) of teachers and principals, there was a profound change in circumstances that could not have been anticipated by the Legislature and the Governor at the time of enactment,. The Governor appointed a Common Core Task Force, comprised of a diverse and highly qualified group of education officials, teachers, parents, and state legislative representatives, to review the Common Core standards and assessments that form the underpinning of the APPRs. The Common Core Task Force recommended that the State Education Department thoroughly review both the Common Core standards and assessments and the State-provided growth model used to measure growth on those assessments, and that there be a transition period established during which the grades 3-8 assessments would not be used for high stakes decisions for teachers or students. Specifically, the Task Force's Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model."

Newly appointed Commissioner MaryEllen Elia then recommended to the Board of Regents that the State Education Department undertake a searching review of the Common Core standards, Grades 3-8 Common Core ELA and Math assessments and the State provided growth model used to measure student growth on those assessments for APPR purposes, to be conducted over a four year period. At that point strict application of new § 3012-d, which relied heavily on the State provided growth model to evaluate the performance of teachers and provided, became untenable and could have resulted in unjust results and hardship to teachers and principals that could not have been intended by the Legislature when it enacted section 3012-d. Because the APPR is a continuous process involving collective negotiations between school districts and BOCES and the employee organizations representing classroom teachers and building principals, immediate action was necessary to eliminate the potential for hardship and unjust results if the State provided growth model continued to be used for high stakes decisions involving teachers and students while it, the growth model, as well as the Common Core standards and assessments were being reviewed and potentially modified. Based on Recommendation No. 21 of the Common Core Task Force, which included representation from the Governor and the Legislature, the Board of Regents adopted the regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents to avoid having the State-provided growth model used for high stakes determinations for teachers and principals in circumstances that the Legislature could not have anticipated and under which the Legislature could not have intended it be used for high stakes.

Furthermore, sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents do not eliminate the requirement that districts and BOCES implement their APPR plans in their entirety during the transition period. Scores and ratings pursuant to all of the measures found in the approved APPR plan, including State-provided growth scores and measures that utilize the grades 3-8 ELA and math State assessments, will continue to be calculated and provided to educators for advisory purposes and districts/BOCES will continue to report this information to the State, and the State will continue to report aggregate data to the public. The regulations merely take scores for those portions of the evaluation related to State-provided growth scores and SLOs based on State assessments out of the evaluation for employment purposes, including tenure determinations, individual employment records and teacher and principal improvement plans.

5. COMMENT:

To be forced to now potentially purchase and administer an additional assessment so close to the State Assessments is both a financial burden on the district and is counterproductive to the edict from the State to reduce student assessments.

DEPARTMEENT RESPONSE:

Sections 30-2.14 and 30-3.17 as adopted by the Board of Regents during their February 2016 meeting do not require the creation of alternate SLOs in the 2015-16 school year. Based on feedback received from the field, an amendment was made to the proposed rule at the February meeting to clarify that the alternate SLO requirement is only applicable to APPRs completed during the remainder of the transition period (2016-17 through 2018-19 school years). Moreover, the regulation does not require districts/BOCES to purchase and/or create new assessments. On the contrary, districts/BOCES should consider utilizing any other assessments that are currently being administered in classrooms when developing alternate SLOs during the transition period. In many instances, the use of formative and diagnostic assessments in combination with a summative assessment or performance task are already in use and can be authentic and meaningful measures of student performance. Further, districts/BOCES have the option to use school- or district-wide measures based on State assessments that are not the grades 3-8 ELA and math State assessments, e.g., the grades 4 and 8 State Science assessments or the Regents examinations.

6. COMMENT:

Those of us that complied and successfully negotiated 3012-d plans should be able to use or not use results from 3-8 state tests if desired, and we should not be forced to buy or create other assessments. If the Commissioner/Board of Regents is able to permit Districts the option to use Rubric scores only, great;. but please do not take away the option to use the State Provided Growth Scores and/or results from the 3-8 state tests if a District so desires to do so. Perhaps the transitional regulations could/should state that approved 3012-d plans remain in effect ''as is'' unless otherwise re-negotiated at the local level based on any permitted options that are identified.

DEPARTMENT RESPONSE:

See Responses to Questions 3 and 5.

7. COMMENT:

Commenters request a one-year moratorium for districts that effectively negotiated and have approved by the State Education Department § 3012-d plans that include: no additional testing for districts that have approved § 3012-d plans; districts whose § 3012-d plans contain group goals and/or individual teacher scores based on state assessment or growth scores should only utilize the teacher/principal observation portion of the matrix included in a teacher or principal's final rating if state assessments are not permitted; back-up or new SLO's whose targets are set after December 1, 2015 should not be allowed for the 2015-2016 school year; for the 2016-2017 school year, information on new testing or additional tests that must be purchased must be given to districts prior to budget development; there should be an acknowledgement that districts with approved § 3012-d plans negotiated in good faith with teacher and administrative unions, and that given compliance with the new law the districts should be given wider discretion in implementation of our plans for at least the 2015-2016 school year; an unintended consequence of not including NYSED Science examination in the definition of state assessments is that some plans will have a total focus on 4 and 8 science as a group measure for all teachers and principals, this needs to be addressed; and there must be material changes to the regulations that address the points above in relation to § 3012-d.

DEPARTMENT RESPONSE:

Sections 30-2.14 and 30-3.17 as adopted by the Board of Regents during their February 2016 meeting do not require the creation of alternate SLOs in the 2015-16 school year. Based on feedback from the field, an amendment was made to the proposed rule at the February Regents meeting to clarify that the alternate SLO requirement is only applicable to APPRs completed during the remainder of the transition period (2016-17 through 2018-19 school years). Additionally, districts and BOCES will continue to have the ability to submit material changes to their APPR plans during the transition period. Thus, if they desire to make changes to the measures specified in the APPR plan in light of the transition regulations, they are able to do so. For districts/BOCES will APPR plans already approved pursuant to Education Law § 3012-d in the 2015-16 school year, the description of the alternate SLOs that will be used during the transition period shall be submitted to the Department on a supplemental form to their currently approved § 3012-d APPR plans (rather than re-opening their plan in the Review Room portal). These districts/BOCES can submit the supplemental form to the Department any time between March 2, 2016 and March 1, 2017 for implementation in the 2016-17 school year. Thus, there is a significant amount of time being provided to districts and BOCES to consider what measures they wish to use prior to implementation for the 2016-17 school year.

Regarding the commenter's concern relating to overreliance on the grades 4 and 8 State Science assessments, as indicated in the response to Comment #3, Recommendation #21 from the Governor's Common Core Task Force called for the exclusion of grades 3-8 ELA and math State assessments aligned to the Common Core, and did not include any reference to State Science assessments.

8. COMMENT:

The emergency regulations relating to 3012-d transition scores (30-3.17) require that, where no scores/ratings in the student performance category can be generated because they rely on State assessments, a new ''back up'' SLO must be developed using approved assessments other than State assessments. Compliance with this new requirement poses numerous challenges:

- The term ''back up SLO'' is misplaced as the new SLO is being developed based upon an assessment not used previously for this purpose. Districts have not budgeted for acquisition or development of approved assessments or necessarily provided training on the use of the assessment.
- It is much too late in the school year to measure a full year of growth based upon a new assessment.
- Because students must still take state assessments and Regents, adding new assessments for APPR purposes increases testing time for students.
- Whether directly or indirectly, high school teachers have been evaluated at least partially on their Regents results long before the advent of Common Core. Their SLO's and the core business of the high schools support this model. Excluding non-Common Core Regents exams mid-year without a clear and vetted alternative, or adding an additional assessment for evaluation purposes, fundamentally shifts the focus of the high school program.

There is similar confusion regarding the use of ''back up SLOs'' in the revisions to 3012-c regulations. New section 30-2.14 (b)(2) states that, for the transition period, the composite APPR score and rating shall be generated based upon the ''remaining subcomponents of the annual professional performance review that are not based on State assessments and/or a State-provided growth score on Regents examinations'' and that this score ''shall include the use of any back up SLOs developed by the district/BOCES in lieu of the State-provided growth score on State assessments.''

Before this revision, back up SLOs for teachers or principals whose student growth measure rested upon State assessments/Regents had to be based upon those assessments. There would be no ''back up'' SLO based upon another assessment. It is unclear whether 30-2.14(b)(2) now requires acquisition of a State approved assessment and development of a new SLO, or whether these individuals' APPR composite scores would be based solely on the remaining components that do not rely on State assessments or Regents.

DEPARTMENT RESPONSE:

Regarding the term "back-up SLO," the Department agrees. Based on feedback received from the field, section 30-3.17 of the Rules of the Board of Regents specifically uses the term "alternate SLO" instead of "back-up SLO" when describing the measures that must be selected by districts and BOCES during the 2016-17 through 2018-19 school years in the event that there are no remaining student performance measures for an educator after the results of the grades 3-8 ELA and math State assessments and any State-provided growth scores are excluded from the calculation of transition scores and ratings.

Additionally, the Department agrees with your concerns over developing alternate SLOs during the 2015-16 school year. Based on feedback from the field, the amended version of section 30-3.17 adopted by the Board of Regents at their February meeting only requires the creation of alternate SLOs during the 2016-17 through 2018-19 school years.

With respect to your concerns regarding additional testing, please see the response to Comment #5.

Regarding the use of Regents assessments as part of Student Performance measures for teachers whose courses end in those assessments, sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents do not preclude the use of Regents assessments as the underlying evidence for SLOs (see, e.g., Question 10 of the Department's APPR Transition FAQ, available on EngageNY at: https://www.engageny.org/resource/guidance-on-new-york-s-annual- professional-performance-review-law-and-regulations).

Alternate SLOs do not require additional testing. On the contrary, districts/BOCES should consider utilizing any other assessments that are currently being administered in those classrooms. In many instances, the use of formative and diagnostic assessments in combination with a summative assessment or performance task are already in use and can be authentic and meaningful measures of student performance. However, please remember that all non-State assessments must be approved through the Assessment RFQ.

Further, districts/BOCES have the option to use school- or district-wide measures based on State assessments that are not the grades 3-8 ELA and math State assessments, e.g., the grades 4 and 8 State Science assessments or the Regents examinations.

Regarding the commenter's concern of having to create both back-up SLOs and alternate SLOs during the transition period, the Department is considering this feedback and will take these comments into consideration.

9. COMMENT:

The transition period scoring regulations will result in multiple categories of APPRs for 2015/16 under 3012-c and 3012-d: Teachers/principals whose score includes observations; Student growth based upon State approved assessments; and Student achievement based upon State approved assessments (3012-c); Teachers/principals whose score includes observations; and Student achievement based upon State approved assessments (3012-c); Teachers/principals whose score is based solely upon observations (3012-c); Teachers/principals whose score is based upon observations; and Student growth based upon State approved assessments in accordance with previously negotiated APPR (3012-d); and Teachers/principals whose score is based upon observations; and Student growth based upon newly developed SLOs using State approved assessments in order to comply with 30-3.17. We are concerned that the lack of consistency in the APPR measures for 2015/16 will raise questions of equity for our teachers and principals.

DEPARTMENT RESPONSE:

The regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents is intended to implement Recommendation #21 of the Governor's Common Core Task Force, which was comprised of a diverse and highly qualified group of education officials, teachers, parents, and state representatives. Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model.

The law requires that districts' and BOCES' APPR plans require that

the same measures be used for all teachers of the same grade and subject across a district for the required subcomponent of the Student Performance category. Therefore, the calculation of transition scores and ratings must include the same components for all teachers of the same grade and subject, but not necessarily across the district.

10. COMMENT:

At the local level, school districts and BOCES have worked tirelessly to maintain working relationships with negotiating units through the iterations of APPR. This is becoming increasingly difficult, reflecting the uncertainty over the years in APPR.

DEPARTMENT RESPONSE:

The Department is committed to continuing its work with stakeholder groups as the State completes the transition to higher learning standards through new State assessments aligned to higher learning standards, and a revised State-provided growth model and hopes this transition period will provide some stability in APPR.

11. COMMENT:

For school districts issued waivers, it will now be impossible to reach consensus on 3012-d compliant APPR with local negotiating units as it is very unclear what the rules will be. We recommend that currently issued waivers be deemed effective at least through the 2015/16 school year without the need for further application.

DEPARTMENT RESPONSE:

The Department has notified each superintendent in a district with an approved hardship waiver who is implementing an APPR plan pursuant to Education Law § 3012-c that such Waiver has been automatically extended through August 31, 2016. Notice of the Hardship Waiver approval status for applicable districts has also been posted on each district's APPR plan page on the Department's "Approved APPR Plans" webpage at http://usny.nysed.gov/rttt/teachers-leaders/plans/. Thus, the Department believes this concern has been addressed.

12. COMMENT:

Substituting alternative assessments for state assessments in the development of student learning objectives (SLOs) may actually require an increase in budgets spent on assessments and/or reallocate limited fiscal resources to fund the development of new teacher-developed SLO assessments. Given the Task Force's recommendation of the review and the revision of the Common Core Learning Standards, we believe that developing any new assessments liked to standards still under review will continue to erode our communities' confidence in our system.

DEPARTMENT RESPONSE:

The regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents is intended to implement Recommendation #21 of the Governor's Common Core Task Force, which was comprised of a diverse and highly qualified group of education officials, teachers, parents, and state representatives. Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model.

As for your concerns relating to additional testing and/costs to create an alternate SLO, please see the Response to No. 5.

13. COMMENT:

Declare a full moratorium on Common Core-derived NYSED assessment data for the purpose of student/teacher evaluation, including related local assessments. Such a moratorium shall remain in effect until such time as the newly designed assessments are proven valid, reliable and aligned to the new standards. No assessments should be utilized until the revised standards have been adopted.

DEPARTMENT RESPONSE:

See response to Comment #3.

14. COMMENT:

Implement a teacher and principal evaluation that will be based on the subcomponents currently defined and assessed through state-approved rubrics during the moratorium. These components will shift in weight from 50 to 100 points and require a supervisor to use a range of student assessment data as a component of teacher/principal evaluation.

DEPARTMENT RESPONSE:

The regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents is intended to implement Recommendation #21 of the Governor's Common Core Task Force, which was comprised of a diverse and highly qualified group of education officials, teachers, parents, and state representatives. Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model.

The Department is requiring districts/BOCES to use an alternate SLO for the 2016-2017 school year through the 2018-2019 school year because the Department believes that consistent with the intent of Education Law § 3012-d, it is important to measure a teacher's or principal's performance based on both student performance and observations. As a result, the Department is requiring districts/BOCES to develop alternate SLOs in lieu of the State-provided growth scores. However, based on feedback from the field, alternate SLOs will not be required in the 2015-2016 school year.

15. COMMENT:

Convene a panel of nationally recognized experts in the areas of teaching and learning, curriculum development and psychometrics. The panel should also include seasoned practitioners, including teachers, principals and superintendents. The charge to the panel should be to create a meaningful teacher and principal evaluation system that links practice to measurable student outcomes.

DEPARTMENT RESPONSE:

Section 30-3.1(e) of the Rules of the Board of Regents indicates that the Board of Regents shall convene an assessment and evaluation workgroup or workgroups, comprised of stakeholders and experts in the field to provide recommendations to the Board of Regents on assessments and evaluations that could be used for annual professional performance reviews in the future.

16. COMMENT:

On behalf of our school district clients, I would like to ask for clarification in the regulations about districts' duties to continue to create and implement back-up SLOs based on the now-prohibited State assessments. That is, since the 3-8 State assessments will still be used for advisory scores, should there not be enough students in a class taking the Math/ELA exams for the teacher to receive a SPGS, does the district then have to do the original version of a back-up SLO based on that State assessment? I would ask that the Department please consider the increased workload this will have for districts if the answer is yes, since beginning next year districts would then have to do 2 back-up SLOs for each of their grades 3-8 teachers and principals – a State assessment back up SLO and an alternate, non-State assessment back-up SLO.

DEPARTMENT RESPONSE:

Back-up SLO requirements are not specifically addressed in sections 30-2.14 or 30-3.17 of the Rules of the Board of Regents. The Department will take this feedback into consideration when making revisions to the APPR Transition Guidance document, which the Department anticipates releasing shortly.

17. COMMENT:

Please do not require that § 3012-d districts use back-up SLO's for Grades 3-8 ELA and Math. § 3012-d districts should be allowed to use 100% observation for 2015-16. This would provide those of us that went ahead and did the right thing by seeking approval for § 3012-d, to have equity with § 3012-districts.

DEPARTMENT RESPONSE:

Based on feedback received from the field, the regulations were amended to eliminate the requirement for alternate SLOs for the 2015-2016 school year. The amended version of section 30-3.17 adopted by the Board of Regents at their February meeting only requires the creation of alternate SLOs during the 2016-17 through 2018-19 school years. Thus, during the 2015-16 school year, if after excluding the results of the grades 3-8 ELA and math State assessments and any State-provided growth scores, there are no remaining student performance measures, then educator's evaluations will be based only on the observation/school visit category. Also, see Response to Comment #16.

18. COMMENT:

While I commend the Regents for your responsiveness, I hope that you might consider that the widely stated concerns about the use of student assessment data are not limited to Common Core tests, and are in fact prevalent with any measure of student performance that is used to evaluate teachers and principals. As such, I ask that the Board of Regents consider suspending the use of all student performance measures, including those based on any State assessment, Regents exam, or other State approved assessment, both for the current school year and throughout the transition period.

Within a given school or district, some educators will be evaluated based on student performance results and others will not. This creates an inequity and inconsistency that will surely fuel the negativity and divisiveness related to the APPR. This inequity will seemingly be resolved next year and through the transition period, wherein the regulations require the development of an alternate SLO, using State-approved assessments other than grades 3?128;8 ELA or math State assessments. While the results of diagnostic formative assessments may be used for these alternate SLOs,

it must be considered that most districts selected such assessments for use in screening students for academic intervention, and may have intentionally excluded them from previous APPR plans. Not only were these assessments not designed to be used as a measure of educator effectiveness; to use them for this purpose would lead to the same level of anxiety and resistance that has surfaced with grades 3-?128;8 ELA and math assessments. As a result, the valuable and informative student learning data from these assessments may be compromised, particularly as a result of parents opting out, thereby limiting districts' ability to use this data for its intended purpose – to monitor student progress in learning.

DEPARTMENT RESPONSE:

See Responses to No. 3, 5 and 9. In addition, when creating an alternate SLO during the transition period, school districts, boards of cooperative educational services should consider this comment when selecting an assessment for the SLO.

19. COMMENT:

The regulations allow for the development of SLOs, including school or district?128;wide measures, using other State assessments such as the grades 4 and 8 State Science assessments or Regents examinations. While this may seem to be a viable alternative for the transition period, it must be considered that the SLO target setting process is typically arbitrary, nonscientific, and not based on a statistically valid or reliable growth model. While superintendents must assure the Department that all SLO growth targets represent a minimum of one year of expected growth, districts must establish these targets with a narrow and limited data set, without access to comparable data for similar students, and without the ability to conduct the robust statistical analysis that is inherent in the State-provided growth scores. In fact, we find it most disconcerting that the most reliable and valid measure of student performance available – that of the State?128;provided growth score – must be set aside entirely, and replaced with locally?128;determined academic goals that do not meet any industry standard of statistical reliability or validity.

DEPARTMENT RESPONSE:

Education Law § 3012-d(4)(a)(1) requires that Student Learning Objectives be used in instances where there is no State-provided growth score available. During the transition period, an educators' transition scores and ratings cannot use State-provided growth scores, SLOs must be used. The Department has developed a number of resources around developing meaningful SLOs. These resources are available on EngageNY at: https://www.engageny.org/resource/student-learning-objectives.

20. COMMENT:

Thank you for providing the field with the FAQ dated January 15, 2016. If possible, could you please further clarify the following points?

1. In the document, it states that for the 15-16 school year, grades 4-8 will have state growth scores excluded, but the score should still be reported to the teacher as an advisory score. If the school district has not finished writing back-up SLOs, should they continue this process, since the score will be excluded and the back-up is for ''emergency'' purposes only? This would seem to be one of the undue burdens mentioned in the FAQ,

2. Until 2019, the document states, the teachers who receive state growth scores, should be given the score in an advisory capacity, but should create a SLO or have a group measure based on one of the alternative measures. Should the teacher not have a high enough ''n'' to generate the advisory growth score, does the teacher still need the back-up SLO based on the state assessment in addition to the SLO or group metric described in the guidance, in order to provide the teacher with the advisory score? Again, this seems to fall in the undue burden category, but we would like clarification to guarantee we are in compliance.

3. In all previous guidance, teachers could only be linked to tests that were given in their building. Language often said ''school-wide'', in the FAQ dated 1/15/16 there are references to ''district-wide measures''. Does this mean a district could link a k-3 building to the 4th grade science exam or all of the students to the results of the regents exams? If a district-wide measure is a possibility, is it only allowable during the transition period or will districts be allowed to link all teachers, who do not receive a growth score, to a district measure after 2019?

DEPARTMENT RESPONSE:

Regarding items 1 and 2, back-up SLO requirements are not specifically addressed in sections 30-2.14 or 30-3.17 of the Rules of the Board of Regents. The Department will take this feedback into consideration when making revisions to the APPR Transition Guidance document.

Regarding item #3, the provisions relating to district-wide measures in the Department's APPR Transition FAQ refer only to alternate SLOs used during the transition period, not traditional SLOs used for teachers whose courses do not end in a State assessment. The Department will take the commenter's feedback into consideration when revising the APPR Guidance documents.

21. COMMENT:

As a veteran first grade teacher, I think it is terribly unfair that based on the current plan, my scores are based on a different set of evaluative criteria than others in my kindergarten through 4th grade building. I have test scores beyond my control AND an observation while colleagues have an observation alone. Shouldn't we all just be observed - especially this year?

DEPARTMENT RESPONSE:

The law requires that APPR plans use the same measures for all teachers of the same grade and subject across a district for the required subcomponent of the Student Performance category. Thus, the calculation of transition scores and ratings must include the same measures for all teachers of the same grade and subject.

Additionally, please see the response to Comment #9.

22. COMMENT:

I recognize and appreciate the right of the state education department to change the APPR procedures. However, doing so at mid-year is neither fair nor morally right. I believe that any changes made this year in the APPR process should not go into effect until next year. For this year we should go under the old APPR procedures. As teachers, we have planned and prepared for the APPR process as it has been and was until the recent changes.

DEPARTMENT RESPONSE:

Based on feedback received from the field, an amendment was made to the proposed rule at the February meeting to clarify that alternate SLOs are only applicable to APPRs completed during the 2016-17 through 2018-19 school years. Therefore, no changes will be needed to approve plans for use in the 2015-2016 school year.

However, sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents still require your district/BOCES to calculate and provide to teachers the original scores and ratings calculated using all of the measures specified in the approved APPR plan for advisory purposes. Thus, the Department hopes that these original scores and ratings will continue to be used at the local level for advisory purposes.

23. COMMENT:

I do not think it is fair for some teachers to receive only an observation score. All teachers should only receive an observation score. We should not just use the regents and science for exams for a score. Aren't they student assessments, too that are illegal to use?

DEPARTMENT RESPONSE:

Please see responses to Comments 9 and 18.

24. COMMENT:

Please remove this rating system for ALL teachers until we can agree on something else.

DEPARTMENT RESPONSE:

Education Law § 3012-d requires that all teachers be evaluated using a comprehensive evaluation system. A statutory change would be needed to eliminate the teacher and principal evaluation system.

25. COMMENT:

If made permanent in its current form, § 30-3.17 will prohibit districts from using student performance on State Assessments for any teacher or principal evaluative purpose. This, in and of itself, is violative of Education Law § 3012-d(1) which provides that, "for a teacher whose course ends in a state-created or administered test for which there is a state-provided growth model, such teacher shall have a state-provided growth score based upon such model…" Further, under § 3012-d(2), where a course ends in a State-created or administered test, but there is no State-provided growth score, "such assessment must be used as the underlying assessment for such SLO."

As I understand the transition regulations, the State will continue to utilize a growth model and calculate growth scores, § 30-3.17(b)(1), which may be used only for advisory purposes and not to determine the mandatory student performance subcomponent rating, § 30-3.17(b)(2). This is in direct conflict with the statute. Even if it is argued that, the "advisory" score is not based upon an approved, State-provided growth model and, therefore, it is not a true State-provided growth score, State Assessments must nevertheless be used for the SLO. The corrosive effect of agency mandated violations of § 3012-d on the future acceptance of APPR cannot be underestimated, especially where, as I understand, the "need to comply with the statute," is the stated basis for the additional testing burdens placed on districts discussed below. All evaluations under the emergency regulations will be subject to attack, as none will comply with the law.

DEPARTMENT RESPONSE:

The regulatory language found in sections 30-2.14 and 30-3.17 of the Rules of the Board of Regents is intended to implement Recommendation #21 of the Governor's Common Core Task Force, which was comprised of a diverse and highly qualified group of education officials, teachers, parents, and state legislative representatives. Recommendation #21 states, in part, that "State-administered standardized ELA and Mathematics assessments for grades three through eight aligned to the Common Core or updated standards shall not have consequences for individual students or teachers. Further, any growth model based on these Common Core tests or

other state assessments shall not have consequences and shall only be used on an advisory basis for teachers during the period of time in which the State transitions to higher learning standards and a revised State growth model. The regulations implement these recommendations.

26. COMMENT:

Under the emergency regulations, Districts must either (1) use additional State-approved assessments to create SLOs; or (2) generate SLOs based upon group goals on State-created assessments that are far removed from the teachers being evaluated. Although the State believes that most districts already use State-approved assessments for some purpose, many districts, such as my own, have taken heed of the statutory proscriptions on unnecessary additional testing and have eliminated most, if not all, non-State assessments. For many, additional assessments are confined to the primary grades, K-2, which have no State-created assessments. Thus, under the emergency regulations, many districts may be forced to use scarce resources – in a year where the tax cap is 0.12%, to cover the cost of purchasing and implementing new assessments. More importantly, the emergency regulations increase the amount of testing that is required for our students, as the State Assessments will not be eliminated during the transition period. We note that the requirements of 8 NYCRR § 30-3.3(a)(3), limiting the amount of time that may be devoted to test preparation have not been lifted.

DEPARTMENT RESPONSE:

Please see response to Comments #5 and 9.

27. COMMENT:

We understand that the emergency regulations allow back-up SLOs based upon group goals using State-approved assessments, which may include third-party assessments and State-created assessments such as the eighth grade science assessment or Regents examinations. Again for districts that do not already use State-approved, third party assessments, this could create a new testing burden. The alternative is to evaluate teachers using assessments far removed from the teachers' actual classrooms.

While unions in many districts have warmed up to group goals using the State Assessments to help reduce testing and disruptions to instruction, these assessments are close to the teachers at the elementary level. It is easy to explain to a third grade teacher that their efforts directly influence the performance of students in the fourth or fifth grade. It is almost inconceivable that they would accept that a third grade teacher would be held accountable to a Regents examination or that the eighth grade science teachers would have the burden of accountability for the entire 3-8, or potentially K-8, population. Yes, SLOs are controlled by the Superintendent, but districts must still negotiate APPR agreements with the unions.

DEPARTMENT RESPONSE:

Please see response to Comments #5 and 9. Also, an elementary teacher could be evaluated based on the 4th and 8th grade State science assessments.

28. COMMENT:

Regardless of whether districts are able to negotiate new agreements, the integrity and validity of such agreements would be questionable at best. What are superintendents to say to unions and the community who object to additional burdensome testing or to the fundamental unfairness of evaluating a teacher on the performance of students years removed from their classroom? "We must comply with the law." If this is the case, how do we respond when we are asked why we must when the emergency regulations, themselves, do not? "We just need to get through this so we don't lose our funding." If this is case, why are we using scarce and valuable resources for the sake of compliance without educational benefit? If § 3012-d agreements are not negotiated, how will the State justify withdrawing funding for failure to comply with the law, when the emergency regulations do not?

DEPARTMENT RESPONSE:

Please see the response to Comment #5 and 9.Regarding withholding of a district's State aid, Education Law § 3012-d(11) specifically links implementation of 3012-d and Subpart 30-3 to a district's State aid increase. A legislative amendment would be needed to decouple State aid from the evaluation system.

29. COMMENT:

Rather than force districts to comply, for compliance sake, with regulations that themselves do not comply with statutory requirements, we ask that the State either (1) reconsider allowing State Assessments to be used for SLOs, noting that the Commissioner has the statutory authority to determine and develop the goal-setting process and can use this authority to develop a fair transition; or (2) revise the regulations so that districts with no alternatives to State Assessments for Student Performance in their APPR plans can revert to using the Teacher Observation or School Visit category only. It is preferable to develop a transition that is compliant with the statute, but if we are to be out of compliance with the statute, why do so in a way that places additional burdens on districts and further risks the integrity of APPR?

DEPARTMENT RESPONSE:

Please see the Responses to Comments #3, 5 and 9.

30. COMMENT:

We are concerned that certain language now appearing in 30-2.14(c) and 30-3.17(b), if adopted on a permanent basis, could have the impact of severely reducing the utility of the teacher or principal improvement plan, and will deprive educational leaders of an important tool in developing effective teachers and principals.

Specifically, our concern is that there is a strong possibility that the regulatory language identified above will be used to support an argument that from now on an improvement plan can only be prepared and implemented for a classroom teacher or principal after a transition rating is derived and that rating is either Developing or Ineffective.

DEPARTMENT RESPONSE:

Districts/BOCES must use transition scores and ratings when making determinations regarding whether an educator will be placed on an improvement plan.

However, the Department believes that all educators will benefit from the development of Personal Professional Development Plans (PPDPs). We recommend that districts work collaboratively with each of their educators to ensure the development of individualized PPDPs for every teacher and principal in order to support continuous improvements for all educators, regardless of their rating.

31. COMMENT:

Commenters expressed concern about the proposed language for regulations 30-2.14(c) and 30-3.17(b). The specific language in the Regents Rules that causes us concern is this:

§ 30-2.14(c) "The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's transition composite score and rating."

§ 30-3.17(b) "The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's overall transition composite rating."

Commenters do not take issue with SED's intention of blocking use of the statutorily-determined rating under 3012-c and 3012-d, but think this language could be used by teacher associations to argue that improvement plans can only be initiated under these limited circumstances. Commenters suggest that the problem can be avoided if the Final Rules are adopted with the following language:

8 NYCRR 30-2.14(c): "During the transition period defined by this section, whether the preparation of a teacher or principal improvement plan is required by subsection 4 of section 3012-c of the Education Law shall be determined by the teacher's or principal's transition composite score and rating." Or, alternately, "The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's transition composite score and rating for subsection 4 of section 3012-c of the Education Law. This does not prevent a teacher or principal improvement plan from being required under other circumstances unrelated to composite scores and ratings.''

8 NYCRR 30-3.17(b): "During the transition period defined by this section, whether the preparation of a teacher or principal improvement plan is required by subsection 15 of section 3012-d and subsection 4 of section 3012-c of the Education Law shall be determined by the teacher's or principal's overall transition composite rating." Or, alternately, "The requirement for a teacher or principal improvement plan shall be based on the teacher's or principal's overall transition composite rating. This does not prevent a teacher or principal improvement plan from being required under other circumstances unrelated to composite scores and ratings."

DEPARTMENT RESPONSE:

The Department will consider clarifying the intent of the regulation in its next iteration of the APPR transition guidance.

32. COMMENT:

By removing the State Assigned Building Score, the largest weighted part of a teacher's SLO is no longer included. Out of a teaching staff of about 300, only 23 teachers have SLOs solely based on students they instruct in a course ending in a RE. All others had had SLOs based in the 3-8 testing or had a Building Score coupled with RE results. I'm having difficulty not only in the idea of removing the Building Score for a large portion of my HS staff as mentioned above, but also assigning SLOs to less than 10% of my staff that do not have the Building Score in their SLO equation. There is a clear equity issue with this. An option might be to reopen and complete a material change to Part 2 of our APPR plan. Alternately, you could just remove the Student Performance section for everyone this year.

DEPARTMENT RESPONSE:

See Response to Comments No. 9.

33. COMMENT:

With more and more plans calling for building-wide measures- and in the future especially with district-wide measures, there will be a great number of questions on who can actually score assessments in the district.

RESPONSE:

The Department will consider this comment as it moves forward and districts/BOCES should consider this when developing their APPR plans.

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*.

Off-Premises Delivery of Prescription Medications by New York Resident Pharmacies

I.D. No.	Proposed	Expiration Date
EDU-10-15-00011-P	March 11, 2015	March 10, 2016

Department of Financial Services

EMERGENCY RULE MAKING

Assessment of Entities Regulated by the Banking Division of the Department of Financial Services

I.D. No. DFS-13-16-00002-E
Filing No. 278
Filing Date: 2016-03-11
Effective Date: 2016-03-13

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

Action taken: Addition of Part 501 to Title 3 NYCRR.

Statutory authority: Banking Law, section 17; Financial Services Law, section 206

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

Specific reasons underlying the finding of necessity: Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision (including examination) of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of in the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

Litigation commenced in June, 2011 challenged the methodology used by the Banking Department to assess mortgage bankers. On May 3, 2012, the Appellate Division invalidated this methodology for the 2010 State Fiscal Year, finding that the former Banking Department had not followed the requirements of the State Administrative Procedures Act.

In response to this ruling, the Department has determined to adopt this new rule setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

The emergency adoption of this regulation is necessary to implement the requirements of Section 17 of the Banking Law and Section 206 of the Financial Services Law in light of the determination of the Court and the ongoing need to fund the operations of the Department without interruption.

Subject: Assessment of entities regulated by the Banking Division of the Department of Financial Services.

Purpose: New Part 501 implements Section 17 of the Banking Law and Section 206 of the Financial Services Law and sets forth the basis for allocating all costs and expenses attributable to the operation of the Banking Division of the Department of Financial Services among and between any person or entity licensed, registered, incorporated or otherwise formed pursuant the Banking Law.

Text of emergency rule: *Part 501*

BANKING DIVISION ASSESSMENTS

§ 501.1 Background.

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated on October 3, 2011 into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL. Effective October 3, 2011, assessments are governed by Section 206 of the FSL, provided that Section 17 of the BL continues to apply to assessments for the fiscal year commencing on April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (including, but not limited to, compensation, lease costs and other overhead costs) of the Department attributable to institutions subject to the BL are to be charged to, and paid by, such regulated institutions. These institutions ("Regulated Entities") are now regulated by the Banking Division of the Department. Under both Section 17 of the BL and Section 206 of the FSL, the Superintendent is authorized to assess Regulated Entities for its total costs in such proportions as the Superintendent shall deem just and reasonable.

The Banking Department has historically funded itself entirely from industry assessments of Regulated Entities. These assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This regulation sets forth the basis for allocating such expenses among Regulated Entities and the process for making such assessments.

§ 501.2 Definitions.

The following definitions apply in this Part:

(a) "Total Operating Cost" means for the fiscal year beginning on April 1, 2011, the total direct and indirect costs of operating the Banking Division. For fiscal years beginning on April 1, 2012, "Total Operating Cost" means (1) the sum of the total operating expenses of the Department that are solely attributable to regulated persons under the Banking Law and (2) the proportion deemed just and reasonable by the Superintendent of the other operating expenses of the Department which under Section 206(a) of the Financial Services Law may be assessed against persons regulated under the Banking Law and other persons regulated by the Department.

(b) "Industry Group" means the grouping to which a business entity regulated by the Banking Division is assigned. There are three Industry Groups in the Banking Division:

(1) The Depository Institutions Group, which consists of all banking organizations and foreign banking corporations licensed by the Department to maintain a branch, agency or representative office in this state;

(2) The Mortgage-Related Entities Group, which consists of all mortgage brokers, mortgage bankers and mortgage loan servicers; and

(3) The Licensed Financial Services Providers Group, which consists of all check cashers, budget planners, licensed lenders, sales finance companies, premium finance companies and money transmitters.

(c) "Industry Group Operating Cost" means the amount of the Total Operating Cost to be assessed to a particular Industry Group. The amount is derived from the percentage of the total expenses for salaries and fringe benefits for the examining, specialist and related personnel represented by such costs for the particular Industry Group.

(d) "Industry Group Supervisory Component" means the total of the Supervisory Components for all institutions in that Industry Group.

(e) "Supervisory Component" for an individual institution means the product of the average number of hours attributed to supervisory oversight by examiners and specialists of all institutions of a similar size and type, as determined by the Superintendent, in the applicable Industry Group, or the applicable sub-group, and the average hourly cost of the examiners and specialists assigned to the applicable Industry Group or sub-group.

(f) "Industry Group Regulatory Component" means the Industry Group Operating Cost for that group minus the Industry Group Supervisory Component and certain miscellaneous fees such as application fees.

(g) "Industry Financial Basis" means the measurement tool used to distribute the Industry Group Regulatory Component among individual institutions in an Industry Group.

The Industry Financial Basis used for each Industry Group is as follows:

(1) For the Depository Institutions Group: total assets of all institutions in the group;

(2) For the Mortgage-Related Entities Group: total gross revenues from New York State operations, including servicing and secondary market revenues, for all institutions in the group; and

(3) For the Licensed Financial Services Providers Group: (i.) for budget planners, the number of New York customers; (ii.) for licensed lenders, the dollar amount of New York assets; (iii.) for check cashers, the dollar amount of checks cashed in New York; (iv.) for money transmitters, the dollar value of all New York transactions; (v.) for premium finance companies, the dollar value of loans originated in New York; and (vi.) for sales finance companies, the dollar value of credit extensions in New York.

(h) "Financial Basis" for an individual institution is that institution's portion of the measurement tool used in Section 501.2(g) to develop the Industry Financial Basis. (For example, in the case of the Depository Institutions Group, an entity's Financial Basis would be its total assets.)

(i) "Industry Group Regulatory Rate" means the result of dividing the Industry Group Regulatory Component by the Industry Financial Basis.

(j) "Regulatory Component" for an individual institution is the product of the Financial Basis for the individual institution multiplied by the Industry Group Regulatory Rate for that institution.

§ 501.3 Billing and Assessment Process.

The New York State fiscal year begins April 1 and ends March 31 of the following calendar year. Each institution subject to assessment pursuant to this Part is billed five times for a fiscal year: four quarterly assessments (each approximately 25% of the anticipated annual amount) based on the Banking Division's estimated annual budget at the time of the billing, and a final assessment (or "true-up"), based on the Banking Division's actual expenses for the fiscal year. Any institution that is a Regulated Entity for any part of a quarter shall be assessed for the full quarter.

§ 501.4 Computation of Assessment.

The total annual assessment for an institution shall be the sum of its Supervisory Component and its Regulatory Component.

§ 501.5 Penalties/Enforcement Actions.

All Regulated Entities shall be subject to all applicable penalties, including late fees and interest, provided for by the BL, the FSL, the State Finance law or other applicable laws. Enforcement actions for nonpayment could include suspension, revocation, termination or other actions.

§ 501.6 Effective Date.

This Part shall be effective immediately. It shall apply to all State Fiscal Years beginning with the Fiscal Year starting on April 1, 2011.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 8, 2016.

Text of rule and any required statements and analyses may be obtained from: Hadas A. Jacobi, Esq., Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department (the "Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services (the "Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

In response to a court ruling, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012) ("Homestead"), that held that the Department should adopt changes to its assessment methodology for mortgage bankers through a formal assessment rule pursuant to the requirements of the State Administrative Procedures Act ("SAPA"), the Department has determined to adopt this new regulation setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

2. Legislative Objectives

The BL and the FSL make the industries regulated by the former Banking Department (and now by the Banking Division of the new Department) responsible for all the costs and expenses of their regulation by the State. The assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This reflects a long-standing State policy that the regulated industries are the appropriate parties to pay for their supervision in light of the financial benefits it provides to them to engage in banking and other regulated businesses in New York. The statute specifically provides that these costs are to be allocated among such institutions in the proportions deemed just and reasonable by the Superintendent.

While this type of allocation had been the practice of the former Banking Department for many decades, Homestead found that a change to the methodology for mortgage bankers to include secondary market and servicing income should be accomplished through formal regulations subject to the SAPA process. Given the nature of the Banking Division's assessment methodology - - the calculation and payment of the assessment is ongoing throughout the year and any period of uncertainty as to the applicable rule would be extremely disruptive - - the Department has determined that it is necessary to adopt the rule on an emergency basis so as to avoid any possibility of disrupting the funding of its operations.

3. Needs and Benefits

The Banking Division regulates more than 250 state chartered banks and licensed foreign bank branches and agencies in New York with total assets of over $2 trillion. In addition, it regulates a variety of other entities engaged in delivering financial services to the residents of New York State. These entities include: licensed check cashers; licensed money transmitters; sales finance companies; licensed lenders; premium finance companies; budget planners; mortgage bankers and brokers; mortgage loan servicers; and mortgage loan originators.

Collectively, the regulated entities represent a spectrum, from some of the largest financial institutions in the country to the smallest, neighborhood-based financial services providers. Their services are vital to the economic health of New York, and their supervision is critical to ensuring that these services are provided in a fair, economical and safe manner.

This supervision requires that the Banking Division maintain a core of trained examiners, plus facilities and systems. As noted above, these costs are by statute to be paid by all regulated entities in the proportions deemed just and reasonable by the Superintendent. The new regulation is intended to formally set forth the methodology utilized by the Banking Division for allocating these costs.

4. Costs

The new regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division. Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not change the process utilized by the Banking Division to determine and collect assessments.

7. Duplication

The regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives

The purpose of the regulation is to formally set forth the process employed by the Department to carry out the statutory mandate to assess and collect the operating costs of the Banking Division from regulated entities. In light of Homestead, the Department believes that promulgating this formal regulation is necessary in order to allow it to continue to assess all of its regulated institutions in the manner deemed most appropriate by the Superintendent. Failing to formalize the Banking Division's allocation methodology would potentially leave the assessment process open to further judicial challenges.

9. Federal Standards

Not applicable.

10. Compliance Schedule

The emergency regulations are effective immediately. Regulated institutions will be expected to comply with the regulation for the fiscal year beginning on April 1, 2011 and thereafter.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The regulation does not have any impact on local governments.

The regulation simply codifies the methodology used by the Banking

Division of the Department of Financial Services (the "Department") to assess all entities regulated by it, including those which are small businesses. The regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division.

Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities. It is expected that the effect of this change will be that larger members of the mortgage banking industry will pay an increased proportion of the total cost of regulating that industry, while the relative assessments paid by smaller industry members will be reduced.

2. Compliance Requirements:

The regulation does not change existing compliance requirements. Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the Banking Law are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division. Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

3. Professional Services:

None.

4. Compliance Costs:

All regulated institutions are currently subject to assessment by the Banking Division. The regulation simply formalizes the Banking Division's assessment methodology. It makes only one change from the allocation methodology used by the Banking Department in the previous state fiscal years. That change affects only one of the industry groups regulated by the Banking Division. Regulatory costs assessed to the mortgage banking industry are now divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. Even within the one industry group affected by the change, additional compliance costs, if any, are expected to be minimal.

5. Economic and Technological Feasibility:

All regulated institutions are currently subject to the Banking Division's assessment requirements. The formalization of the Banking Division's assessment methodology in a regulation will not impose any additional economic or technological burden on regulated entities which are small businesses.

6. Minimizing Adverse Impacts:

Even within the mortgage banking industry, which is the one industry group affected by the change in assessment methodology, the change will not affect the total amount of the assessment. Indeed, it is anticipated that this change may slightly reduce the proportion of mortgage banking industry assessments that is paid by entities that are small businesses.

7. Small Business and Local Government Participation:

This regulation does not impact local governments.

This regulation simply codifies the methodology which the Banking Division uses for determining the just and reasonable proportion of the Banking Division's costs to be charged to and paid by each regulated institution, including regulated institutions which are small businesses. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those that are small businesses.

Thereafter, the Banking Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Banking Department changed its overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market and servicing activities. Litigation was commenced challenging this latter change, and in a recent decision, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012), the court determined that the Department should adopt a change to its assessment methodology for mortgage bankers through a formal assessment rule promulgated pursuant to the requirements of the State Administrative Procedures Act. The challenged change in methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants, including those which are small businesses.

Rural Area Flexibility Analysis

Types and Estimated Numbers: There are entities regulated by the New York State Department of Financial Services (formerly the Banking Department) located in all areas of the State, including rural areas. However, this rule simply codifies the methodology currently used by the Department to assess all entities regulated by it. The regulation does not alter that methodology, and thus it does not change the cost of assessments on regulated entities, including regulated entities located in rural areas.

Compliance Requirements: The regulation would not change the current compliance requirements associated with the assessment process.

Costs: While the regulation formalizes the assessment process, it does not change the amounts assessed to regulated entities, including those located in rural areas.

Minimizing Adverse Impacts: The regulation does not increase the total amount assessed to regulated entities by the Department. It simply codifies the methodology which the Superintendent has chosen for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution.

Rural Area Participation: This rule simply codifies the methodology which the Department currently uses for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution, including regulated institutions located in rural areas. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those located in rural areas. It followed the loss of several major banking institutions that had paid significant portions of the former Banking Department's assessments.

Thereafter, the Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Department changed this overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market income and servicing income. This latter change was challenged by a mortgage banker, and in early May, the Appellate Division determined that the latter change should have been made in conformity with the State Administrative Procedures Act. The challenged part of the methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants.

Job Impact Statement

The regulation is not expected to have an adverse effect on employment.

All institutions regulated by the Banking Division (the "Banking Division") of the Department of Financial Services are currently subject to assessment by the Department. The regulation simply formalizes the assessment methodology used by the Banking Division. It makes only one change from the allocation methodology used by the former Banking Department in the previous state fiscal years.

That change affects only one of the industry groups regulated by the Banking Division. It somewhat alters the way in which the Banking Division's costs of regulating mortgage banking industry are allocated among entities within that industry. In any case, the total amount assessed against regulated entities within that industry will remain the same.

New York State Gaming Commission

ERRATUM

A Notice of Adoption, I.D. No. SGC-52-15-00007-A, pertaining to Prohibiting the Administration of Stanozolol to Racehorses, published in the March 16, 2016 issue of the State Register contained an incorrect effective date of the rule. The correct effective date of this notice of adoption is September 16, 2016.

The Department of State apologizes for any confusion this may have caused.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Science, Technology, Engineering and Mathematics Incentive Program

I.D. No. ESC-13-16-00001-E
Filing No. 276
Filing Date: 2016-03-10
Effective Date: 2016-03-10

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

Action taken: Addition of section 2201.13 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 669-e

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2014 term. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students who, beginning August 2014, pursue an undergraduate program of study in science, technology, engineering, or mathematics at a New York State public institution of higher education. High school students entering college in August must inform the institution of their intent to enroll no later than May 1. Therefore, it is critical that the terms of the program as provided in the regulation be available immediately in order for HESC to process scholarship applications so that students can make informed choices. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Science, Technology, Engineering and Mathematics Incentive Program.

Purpose: To implement the New York State Science, Technology, Engineering and Mathematics Incentive Program.

Text of emergency rule: New section 2201.13 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.13 New York State Science, Technology, Engineering and Mathematics Incentive Program.

(a) Definitions. The following definitions apply to this section:

(1) "Award" shall mean a New York State Science, Technology, Engineering and Mathematics Incentive Program award pursuant to section 669-e of the New York State education law.

(2) "Employment" shall mean continuous employment for at least thirty-five hours per week in the science, technology, engineering or mathematics field, as published on the corporation's web site, for a public or private entity located in New York State for five years after the completion of the undergraduate degree program and, if applicable, a higher degree program or professional licensure degree program and a grace period as authorized by section 669-e(4) of the education law.

(3) "Grace period" shall mean a six month period following a recipient's date of graduation from a public institution of higher education and, if applicable, a higher degree program or professional licensure degree program as authorized by section 669-e(4) of the education law.

(4) "High school class" shall mean the total number of students eligible to graduate from a high school in the applicable school year.

(5) "Interruption in undergraduate study or employment" shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, maternity/paternity leave, death of a family member, or military duty.

(6) "Program" shall mean the New York State Science, Technology, Engineering and Mathematics Incentive Program codified in section 669-e of the education law.

(7) "Public institution of higher education" shall mean the state university of New York, as defined in subdivision 3 of section 352 of the education law, a community college as defined in subdivision 2 of section 6301 of the education law, or the city university of New York as defined in subdivision 2 of section 6202 of the education law.

(8) "School year" shall mean the period commencing on the first day of July in each year and ending on the thirtieth day of June next following.

(9) "Science, technology, engineering and mathematics" programs shall mean those undergraduate degree programs designated by the corporation on an annual basis and published on the corporation's web site.

(10) "Successful completion of a term" shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-e of the education law; (ii) completed at least 12 credit hours or its equivalent in a course of study leading to an approved undergraduate degree in the field of science, technology, engineering, or mathematics; and (iii) possessed a cumulative grade point average (GPA) of 2.5 as of the date of the certification by the institution. Notwithstanding, the GPA requirement is preliminarily waived for the first academic term for programs whose terms are organized in semesters, and for the first two academic terms for programs whose terms are organized on a trimester basis. In the event the recipient's cumulative GPA is less than a 2.5 at the end of his or her first academic year, the recipient will not be eligible for an award for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. In such case, the award received for the first academic term for programs whose terms are organized in semesters and for the first two academic terms for programs whose terms are organized on a trimester basis must be returned to the corporation and the institution may reconcile the student's account, making allowances for any other federal, state, or institutional aid the student is eligible to receive for such terms unless: (A) the recipient's GPA in his or her first academic term for programs whose terms are organized in semesters was a 2.5 or above, or (B) the recipient's GPA in his or her first two academic terms for programs whose terms are organized on a trimester basis was a 2.5 or above, in which case the institution may retain the award received and only reconcile the student's account for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. The corporation shall issue a guidance document, which will be published on its web site.

(b) Eligibility. An applicant for an award under this program pursuant to section 669-e of the education law must also satisfy the general eligibility requirements provided in section 661 of the education law.

(c) Class rank or placement. As a condition of an applicant's eligibility, the applicant's high school shall provide the corporation:

(1) official documentation from the high school either (i) showing the applicant's class rank together with the total number of students in such applicant's high school class or (ii) certifying that the applicant is in the top 10 percent of such applicant's high school class; and

(2) the applicant's most current high school transcript; and

(3) an explanation of how the size of the high school class, as defined in subdivision (a), was determined and the total number of students in such class using such methodology. If the high school does not rank the students in such high school class, the high school shall also provide the corporation with an explanation of the method used to calculate the top 10 percent of students in the high school class, and the number of students in the top 10 percent, as calculated. Each methodology must comply with the terms of this program as well as be rational and reasonable. In the event the corporation determines that the methodology used by the high school fails to comply with the term of the program, or is irrational or unreasonable, the applicant will be denied the award for failure to satisfy the eligibility requirements; and

(4) any additional information the corporation deems necessary to determine that the applicant has graduated within the top 10 percent of his or her high school class.

(d) Administration.

(1) Applicants for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility; and

(ii) postmark or electronically transmit applications for program eligibility to the corporation on or before the date prescribed by the corporation for the applicable academic year. Notwithstanding any other rule or regulation to the contrary, such applications shall be received by the corporation no later than August 15th of the applicant's year of graduation from high school.

(2) Recipients of an award shall:

(i) execute a service contract prescribed by the corporation;

(ii) apply for payment annually on forms specified by the corporation;

(iii) confirm annually their enrollment in an approved undergraduate program in science, technology, engineering, or mathematics;

(iv) receive such awards for not more than four academic years of full-time undergraduate study or five academic years if the program of study normally requires five years, as defined by the commissioner pursuant to article thirteen of the education law, excluding any allowable interruption of study; and

(v) respond to the corporation's requests for a letter from their employer attesting to the employee's job title, the employee's number of hours per work week, and any other information necessary for the corporation to determine compliance with the program's employment requirements.

(e) Amounts.

(1) The amount of the award shall be determined in accordance with section 669-e of the education law.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time upon successful completion of the term subject to the verification and certification by the institution of the recipient's GPA and other eligibility requirements.

(3) Awards shall be reduced by the value of other educational grants and scholarships limited to tuition, as authorized by section 669-e of the education law.

(f) Failure to comply.

(1) All award monies received shall be converted to a 10-year student loan plus interest for recipients who fail to meet the statutory, regulatory, contractual, administrative or other requirement of this program.

(2) The interest rate for the life of the loan shall be fixed and equal to that published annually by the U.S. Department of Education for undergraduate unsubsidized Stafford loans at the time the recipient signed the service contract with the corporation.

(3) Interest shall begin to accrue on the day each award payment is disbursed to the institution.

(4) Interest shall be capitalized on the day the award recipient violates any term of the service contract or the date the corporation deems the recipient was no longer able or willing to perform the terms of the service contract. Interest on this amount shall be calculated using simple interest.

(5) Where a recipient has demonstrated extreme hardship as a result of a total and permanent disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, prorate the amount owed commensurate with service completed, discharge the amount owed, or such other appropriate action. Where a recipient has demonstrated in-school status, the corporation shall temporarily suspend repayment of the amount owed for the period of in-school status.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 7, 2016.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Science, Technology, Engineering and Mathematics Incentive Program ("Program") is codified within Article 14 of the Education Law. In particular, Part G of Chapter 56 of the Laws of 2014 created the Program by adding a new section 669-e to the Education Law. Subdivision 5 of section 669-e of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 669-e to create the "New York State Science, Technology, Engineering and Mathematics Incentive Program" (Program). This Program is aimed at increasing the number of individuals working in the fields of science, technology, engineering and mathematics (STEM) in New York State to meet the increasingly critical need for those skills in the State's economy.

Needs and benefits:

According to a February 2012 report by President Obama's Council of Advisors on Science and Technology, there is a need to add to the American workforce over the next decade approximately one million more science, technology, engineering and mathematics (STEM) professionals than the United States will produce at current rates in order for the country to stay competitive. To meet this goal, the United States will need to increase the number of students who receive undergraduate STEM degrees by about 34% annually over current rates. The report also stated that fewer than 40% of students who enter college intending to major in a STEM field complete a STEM degree. Further, a recent Wall Street Journal article reported that New York state suffers from a shortage of graduates in STEM fields to fill the influx of high-tech jobs that occurred five years ago. At a plant in Malta, about half the jobs were filled by people brought in from outside New York and 11 percent were foreigners. According to the article, Bayer Corp. is due to release a report showing that half of the recruiters from large U.S. companies surveyed couldn't find enough job candidates with four-year STEM degrees in a timely manner; some said that had led to more recruitment of foreigners. About two-thirds of the recruiters surveyed said that their companies were creating more STEM positions than other types of jobs. There are also many jobs requiring a two-year degree. In an effort to deal with this shortage, companies are using more internships, grants and scholarships.

The Program is aimed at increasing the number New York graduates with two and four year degrees in STEM who will be working in STEM fields across New York state. Eligible recipients may receive annual awards for not more than four academic years of undergraduate full-time study (or five years if enrolled in a five-year program) while matriculated in an approved program leading to a career in STEM.

The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending an undergraduate program at the State University of New York (SUNY), including state operated institutions, or City University of New York (CUNY). The current maximum annual award for the 2014-15 academic year is $6,170. Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Science, Technology, Engineering and Mathematics Incentive Program award must sign a service agreement and agree to work in New York state for five years in a STEM field and reside in the State during those five years. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

a. It is anticipated that there will be no costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is $8 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application for each year they wish to receive an award up to and including five years of eligibility. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to

financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms/phrases used in the regulation as well as the academic progress requirement. Given the statutory language as set forth in section 669-e of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government, and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal unsubsidized Stafford loan rate in the event that the award is converted into a student loan.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

Department of Law

NOTICE OF ADOPTION

Disclosure Requirements for Condominium Offerors Renting, Rather Than Selling, Unsold Condominium Units

I.D. No. LAW-49-15-00011-A
Filing No. 310
Filing Date: 2016-03-15
Effective Date: 2016-04-15

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

Action taken: Amendment of Part 20 of Title 13 NYCRR.

Statutory authority: General Business Law, section 352-e(2-b)

Subject: Disclosure requirements for condominium offerors renting, rather than selling, unsold condominium units.

Purpose: To clarify a condominium offeror's disclosure obligations in a newly-constructed, vacant, or non-residential condominium.

Text or summary was published in the December 9, 2015 issue of the Register, I.D. No. LAW-49-15-00011-P.

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

Text of rule and any required statements and analyses may be obtained from: Jacqueline Dischell, Department of Law, 120 Broadway, 23rd Floor, New York, NY 10271, (212) 416-8655, email: jackie.dischell@ag.ny.gov

Initial Review of Rule
As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2017, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment
The agency received no public comment.

Department of Motor Vehicles

NOTICE OF ADOPTION

Safety Hearings

I.D. No. MTV-04-16-00005-A
Filing No. 308
Filing Date: 2016-03-15
Effective Date: 2016-03-30

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

Action taken: Amendment of section 127.6 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 303(f), 398-f, 415(9-a), 510(3) and 1194(2)(c)

Subject: Safety hearings.

Purpose: Conforms standard of proof to Court of Appeals decision and DMV practice.

Text or summary was published in the January 27, 2016 issue of the Register, I.D. No. MTV-04-16-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

International Registration Plan

I.D. No. MTV-04-16-00006-A
Filing No. 309
Filing Date: 2016-03-15
Effective Date: 2016-03-30

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

Action taken: Amendment of section 28.1 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 405-i

Subject: International Registration Plan.

Purpose: To remove the exemption for charter buses from the International Registration Plan.

Text or summary was published in the January 27, 2016 issue of the Register, I.D. No. MTV-04-16-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Suffolk County Motor Vehicle Use Tax

I.D. No. MTV-13-16-00004-P

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

Proposed Action: This is a consensus rule making to amend section 29.12(b) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); Tax Law, section 1202(g)

Subject: Suffolk County motor vehicle use tax.

Purpose: To increase the Suffolk County motor vehicle use tax.

Text of proposed rule: Subdivision (b) of section 29.12 is amended to read as follows:

(b) Suffolk County. The County Legislature adopted Local Law No. [1156-2001] *33-2015*, which was approved by the County Executive on [December 20, 2001] *November 23, 2015*, amending Local Law [33-1991] *1156-2001* to establish a Suffolk County motor vehicle use tax. The County Executive of Suffolk County entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part on December 17, 1991, for the collection of such tax on original registrations made on and after January 1, 1992 and upon the renewal of registrations expiring on and after March 1, 1992. The County Executive is the appropriate fiscal officer, except that, (i) for the purposes of Section 29.5(a), Deposit of taxes, the County Treasurer is the appropriate fiscal officer, and (ii) for the purposes of Section 29.8, Right to audit, the County Comptroller is the appropriate fiscal officer, and the County Attorney is the appropriate legal officer of the County of Suffolk referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be [$5] *$15* per annum on such motor vehicles weighing 3500 lbs. or less and [$10] *$30* per annum for such motor vehicles weighing in excess of 3500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Suffolk County, except when owned and used in connection with the operation of a farm by the owner or tenant thereof shall be [$10] *$30* per annum. The increased fees provided in Local Law No. [1156-2001] *33-2015* shall apply to original registrations made on or after [July 1, 2002] *June 1, 2016* and upon renewal of registrations expiring on and after [October 1, 2002] *August 1, 2016*.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: ida.traschen@dmv.ny.gov

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

Consensus Rule Making Determination

This proposed regulation would amend 15 NYCRR section 29.12(b) to increase the Suffolk County motor vehicle use tax collected by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(g) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On November 23, 2015, the Suffolk County Legislature enacted a local providing for an increase in the motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this local law, the tax will increase from five to fifteen dollars per annum on a passenger vehicle weighing 3,500 pounds or less, from ten to thirty dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and from ten to thirty dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax and the amount of the tax, i.e., it must be collected per the mandate of the Suffolk County local law. DMV is merely carrying out the will expressed by the Suffolk County Legislature.

Job Impact Statement

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Article 16 Clinic Services and Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD)

I.D. No. PDD-42-15-00002-A
Filing No. 280
Filing Date: 2016-03-11
Effective Date: 2016-04-01

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

Action taken: Amendment of Part 679, sections 635-10.4, 671.5; and addition of Subpart 635-13 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Article 16 Clinic Services and Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD).

Purpose: To discontinue off-site article 16 clinic services and add requirements for IPSIDD.

Text or summary was published in the October 21, 2015 issue of the Register, I.D. No. PDD-42-15-00002-P.

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

Revised rule making(s) were previously published in the State Register on February 3, 2016.

Text of rule and any required statements and analyses may be obtained from: OPWDD Counsel's Office, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd floor, Albany, NY 12229, (518) 474-7700, email: RAU.Unit@opwdd.ny.gov

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Assessment of Public Comment

This document contains responses to public comments submitted during the public comment period for revised proposed regulations concerning clinic treatment service locations and IPSIDD.

Comment: A commenter sought clarification on paragraph 679.99(t)(4)

of the revised proposed regulation concerning services provided at satellite clinics. The commenter stated that the language seems to imply that any individual who has a need for the services provided at the clinic must be accommodated upon their request.

Response: The revised proposed regulation in paragraph 679.99(t)(4) states: "Services delivered at a satellite site must be available, by appointment, to any individual who is eligible to receive such services."

The regulations provides that services at the satellite clinic location are available to any individual who is eligible to receive services at a clinic pursuant to Part 679 regulations, including individuals with a developmental disability, and individuals without a developmental disability, who meet specified criteria in paragraph 679.3(u) of the regulations. Many satellite clinics are established at locations co-located with other OPWDD programs/services (most frequently day habilitation programs). The provision clarifies, consistent with current practice, that services at a satellite clinic location must not be limited to individuals receiving services at a co-located program. The satellite must be willing and able to serve other individuals who may need services, who do not receive services at a co-located program. Clinic services are available by appointment only.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-13-16-00007-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 the Notice of Intent, filed by Sky View Parc II, LP, to submeter electricity at 131-05, 131-03 and 131-01 40th Road, Flushing, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent to submeter electricity at 131-05, 131-03 and 131-01 40th Road, Flushing, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by Sky View Parc II, LP on March 3, 2016, to submeter electricity at 131-05, 131-03 and 131-01 40th Road, Flushing, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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.

(16-E-0131SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standby Rate Exemption for Offset Tariff Customers

I.D. No. PSC-13-16-00008-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 filed by Related Companies and Oxford Properties on March 4, 2016 in case 16-E-0138 requesting an Order establishing a mechanism by which Offset Tariff customers could benefit from the standby rate exemption.

Statutory authority: Public Service Law, sections 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9), (10) and (12)

Subject: Standby rate exemption for Offset Tariff customers.

Purpose: Consideration of the standby rate exemption for Offset Tariff customers.

Substance of proposed rule: The New York State Public Service Commission (Commission) is considering a petition filed by Related Companies and Oxford Properties (Related) on March 4, 2016 in case 16-E-0138. In the Petition, Related asserts that the options for Offset Tariff customers provided by Consolidated Edison Company of New York, Inc. (Con Edison) effectively deny the standby rate exemption for those customers. Related requests that the Commission direct Con Edison to establish a mechanism by which Offset Tariff customers could benefit from the standby rate exemption. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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.

(16-E-0138SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-13-16-00009-P

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

Proposed Action: The Public Service Commission is considering a Notice of Intent filed by Franklin Place Condominium to submeter electricity at 5 Franklin Place, New York, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of Franklin Place Condominium to submeter electricity at 5 Franklin Place, New York, New York.

Substance of proposed rule: The Commission is considering a Notice of Intent filed by Franklin Place Condominium on February 17, 2016 to submeter electricity at 5 Franklin Place, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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.

(16-E-0082SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Transfer of a 1985 Bell 206L-3 Helicopter

I.D. No. PSC-13-16-00010-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 filed by Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) for the transfer of a 1985 Bell 206L-3 helicopter to Fly Hangar 13, LLC.

Statutory authority: Public Service Law, sections 65, 66 and 70

Subject: Transfer of a 1985 Bell 206L-3 helicopter.

Purpose: To consider the transfer of a 1985 Bell 206L-3 helicopter from NMPC to Fly Hangar 13, LLC.

Substance of proposed rule: The Public Service Commission is considering a petition filed on February 17, 2016 by Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) regarding approval of the transfer of a 1985 Bell 206L-3 helicopter to Fly Hangar 13, LLC. NMPC asserts that the proposed transaction is in the public interest given that the helicopter is no longer used and useful to the NMPC, and that the listed purchase price is reasonable comparing to other similar models on the market. The Commission may adopt, reject, or modify, in whole or in part, the petition request and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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.

(16-M-0083SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Transfer of Stock

I.D. No. PSC-13-16-00011-P

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

Proposed Action: The Public Service Commission is considering a Joint Petition filed February 25, 2016 on behalf of Bruce McNab and Trustee of the Zane Klein Residuary Trust for approval to sell 100% of outstanding capital stock of Crystal Water Corp.

Statutory authority: Public Service Law, section 89-h

Subject: Transfer of stock.

Purpose: To consider the sale of all outstanding Crystal Water Corp. stock to Bruce McNab.

Substance of proposed rule: The Commission is considering a joint petition filed February 25, 2016 on behalf of Bruce McNab (the buyer), and Billie Marks, Lawrence Rutherford, Barbara Klein Asselta as trustee of the Zane Klein Residuary Trust (the sellers), to approve, pursuant to Section 89-h of the Public Service Law ("PSL"), the sale of 100% of the capital stock of Crystal Water Corp. (Crystal Water or the Company). Crystal Water Corp. is a regulated public Water Utility that provides flat rate water service to 101 town homes and the Windham Mountain Village Homeowner Association's clubhouse (102 connections), in a townhome community in an area known as Windham Mountain Village Development in the Town of Windham, Greene County. The Company does not provide fire protection service. Mr. McNab is the current operator of Crystal Water, and Billie Marks, Lawrence Rutherford, Barbara Klein Asselta are the shareholders of Crystal Water. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may also resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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.

(16-W-0126SP1)

Department of Taxation and Finance

EMERGENCY
RULE MAKING

City of New York Withholding Tables and Other Methods

I.D. No. TAF-05-16-00002-E

Filing No. 312

Filing Date: 2016-03-15

Effective Date: 2016-03-15

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

Action taken: Repeal of Appendix 10-C; and addition of new Appendix 10-C to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 671(a)(1), 697(a), 1309 and 1312(a); Administrative Code of the City of New York, sections 11-1771(a) and 11-1797(a); L. 2015, ch. 59, part B

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

Specific reasons underlying the finding of necessity: As part of the enacted Budget legislation, Part B of Chapter 59 of the Laws of 2015 made certain changes to the personal income tax law that require the Commissioner to adjust the withholding tables and other methods in Appendix 10-C of 20 NYCRR, and to promulgate rules to implement the changes as soon as practicable. Section 4 of Part B specifically authorizes emergency action to adopt rules implementing these changes. These rules are being adopted on an emergency basis in accordance with the requirement that rules be adopted and effective as soon as practicable, and to keep the rule in effect until the Notice of Adoption is published in the State Register. Specifically, the amendments to Appendix 10-C reflect the revision of the City of New York tax tables in accordance with the increased rate of New York City personal income tax applicable to income over $500,000 enacted by Part B of Chapter 59 of the Laws of 2015, implemented over a twelve month period for the 2016 tax year, rather than the shorter implementation period required for tax year 2015, and the requirement that the withholding rates reflect the full amount of tax liability as accurately as practicable. The amendments also make technical changes to reformat and repaginate the tables.

Subject: City of New York withholding tables and other methods.

Purpose: To provide current City of New York withholding tables and other methods.

Substance of emergency rule: Section 1309 of the Tax Law and section 11-1771 of the Administrative Code of the City of New York mandate that employers withhold from employee wages amounts that are substantially equivalent to the amount of City of New York personal income tax on residents reasonably estimated to be due for the taxable year. The provisions authorize the Commissioner of Taxation and Finance to provide for withholding of these taxes through regulations promulgated by the Commissioner.

This rule is identical to that adopted as an emergency measure on January 15, 2016, repealing and replacing Appendix 10-C of Title 20 NYCRR, New York City Personal Income Tax on Residents Withholding Tables

and Other Methods of such Title, to provide new City of New York withholding tables and other methods. The amendments to Appendix 10-C reflect the revision of the City of New York tax tables in accordance with the increased rate of New York City personal income tax applicable to income over $500,000 enacted by Part B of Chapter 59 of the Laws of 2015, implemented over a twelve month period for the 2016 tax year, rather than the shorter implementation period required for tax year 2015, and the requirement that the withholding rates reflect the full amount of tax liability as accurately as practicable. The rule keeps the amendments adopted as an emergency measure on January 15, 2016 effective until the Notice of Adoption of the amendments as a permanent rule is published in the State Register.

The rule applies to wages and other compensation subject to withholding paid on or after January 1, 2016.

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. TAF-05-16-00002-EP, Issue of January 15, 2016. The emergency rule will expire May 13, 2016.

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist 1, Department of Taxation and Finance, Office of Counsel, Building 9, Room 200, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: Kathleen.OConnell@tax.ny.gov

Regulatory Impact Statement

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 671(a)(1) provides that the method of determining the amounts of New York State personal income tax to be withheld will be prescribed by regulations promulgated by the Commissioner; section 697(a) provides the authority for the Commissioner to make such rules and regulations as are necessary to enforce the personal income tax; section 1309 (not subdivided) provides that City of New York personal income tax withholding shall be withheld from city residents in the same manner and form as that required by New York State; section 1312(a) provides that any personal income tax imposed on New York City residents by the City of New York shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law, except where noted; Administrative Code of the City of New York, section 11-1771(a) provides that the method of determining the amount of City tax withholding will be prescribed by regulations promulgated by the Commissioner; section 11-1797(a) provides for the Commissioner to make such rules and regulations that are necessary to enforce the provisions of the Administrative Code of the City of New York. Section 4 of Part B of Chapter 59 of the Laws of 2015 requires the Commissioner to adopt rules to implement changes in the withholding tax tables and methods relating to the personal income tax increases made by Part B.

2. Legislative objectives: The rule amends Appendix 10-C related to the exact calculation method (Method II) for the City of New York personal income tax on residents for withholding purposes as required by Chapter 59 of the Laws of 2015. Because the income tax changes made by Chapter 59 relate to taxpayers with incomes over certain amounts, the wage bracket table method (Method I) tables are not affected. The amendments implement revised City of New York withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2016. Specifically, the amendments reflect the increased rate of New York City personal income tax applicable to income over $500,000 provided in Part B of Chapter 59, implemented over a twelve month period for the 2016 tax year, rather than the shorter implementation period required for tax year 2015. The rule also makes technical changes to reformat and repaginate the tables.

3. Needs and benefits: This rule sets forth amendments to the City of New York withholding tables and other methods, applicable to wages and other compensation paid on or after January 1, 2016, reflecting the revision of the tax rates contained in Part B of Chapter 59 of the Laws of 2015. This rule benefits taxpayers by providing City of New York withholding rates that more accurately reflect the current income tax rates. If this rule is not promulgated, the use of the existing withholding tables would cause some under-withholding for some taxpayers.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: Since (i) the Tax Law and the Administrative Code of the City of New York already mandate withholding in amounts that are substantially equivalent to the amounts of City of New York personal income tax on residents reasonably estimated to be due for the taxable year, and (ii) this rule conforms Appendix 10-C of Title 20 NYCRR to the rates of the City of New York personal income tax on residents, as required by Chapter 59 of the Laws of 2015, any compliance costs to employers associated with implementing the revised withholding tables and other methods are due to such statutes, and not to this rule.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to make amendments to the New York City Personal Income Tax on Residents Regulations and to Appendix 10-C arises due to the statutory changes in the rates of the City of New York personal income tax on residents, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Taxpayer Guidance Division, Office of Tax Policy Analysis, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: Local governments, as employers, would be required to implement the new withholding tables and other methods in the same manner and at the same time as any other employer.

6. Paperwork: This rule will not require any new forms or information. The reporting requirements for employers are not changed by this rule. Employers will be notified of the amendments to the tables and other methods and directed to the Department's website for the updated tables and other methods.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since section 11-1771(a) of the Administrative Code of the City of New York and Chapter 59 of the Laws of 2015 require that withholding tables and other methods be promulgated, there are no viable alternatives to providing such tables and other methods.

9. Federal standards: This rule does not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance schedule: The required information was made available to affected employers in sufficient time to implement the revised City of New York withholding tables and other methods for wages and other compensation paid on or after January 1, 2016, when the rule was adopted as an emergency measure on January 15, 2016. This rule keeps the amendments in effect until the Notice of Adoption of the amendments as a permanent rule is published in the State Register.

Regulatory Flexibility Analysis

1. Effect of rule: Small businesses, within the meaning of the State Administrative Procedure Act, that are currently subject to the City of New York withholding requirements will continue to be subject to these requirements. This rule should, therefore, have little or no effect on small businesses other than the requirement of conforming to the new withholding tables and other methods. All small businesses that are employers or are otherwise subject to the withholding requirements must comply with the provisions of this rule.

2. Compliance requirements: This rule requires small businesses and local governments that are already subject to the City of New York withholding requirements to continue to deduct and withhold amounts from employees using the revised City of New York withholding tables and other methods. The promulgation of this rule will not require small businesses or local governments to submit any new information, forms, or paperwork.

3. Professional services: Many small businesses currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of such services.

4. Compliance costs: Small businesses and local governments are already subject to the City of New York withholding requirements. Therefore, small businesses and local governments are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York, and City of Yonkers purposes. As such, these changes should place no additional burdens on small businesses and local governments. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

5. Economic and technological feasibility: This rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: Section 671(a)(1) of the Tax Law mandates that New York State withholding tables and other methods be promulgated. Section 1309 of the Tax Law mandates, in part, that the City of New York withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law. There are no provisions in the Tax Law that exclude small businesses and local governments from the withholding requirements. The regulation provides some relief to small businesses and local governments with respect to the methods allowed to comply with the withholding requirements by continuing to provide employers with more than one method of computing the amount to withhold from their employees. Look-up tables are provided for employers who prepare their payrolls manually, and an exact calculation method is provided for employers with computer-based systems.

7. Small business and local government participation: The following organizations were given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of the New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Committee of the New York State Business Council; the Retail Council of New York State; and the New York Association of Convenience Stores; the Tax Section of the New York State Bar Association; the Association of the Bar of the City of New York; the New York State Society of Enrolled Agents; the New York State Society of CPAs; and the Taxation Committee of the Business Council of New York State. In addition, the City of New York was consulted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Every employer, including any public or private employer located in a rural area as defined in section 102(10) of the State Administrative Procedure Act, that is currently subject to the City of New York withholding requirements will continue to be subject to such requirements and will be required to comply with the provisions of this rule. The number of employers that are also public or private interests in rural areas cannot be determined with any degree of certainty. The effect on employers in rural areas is minimized because the changes relate to the New York City personal income tax on residents withholding requirements. There are 44 counties throughout this State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This rule requires employers that are already subject to the City of New York withholding requirements to continue to deduct and withhold amounts from employees using the revised withholding tables and other methods. The promulgation of this rule will not require employers to submit any new information, forms, or other paperwork.

Further, many employers currently utilize bookkeepers, accountants, and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of any such services.

3. Costs: Employers are already subject to the City of New York withholding requirements. Therefore, employers are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York, and City of Yonkers purposes. As such, these City of New York changes should place no additional burdens on employers located in rural areas. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

4. Minimizing adverse impact: Section 11-1771(a) of the Administrative Code of the City of New York mandates that City of New York withholding tables and other methods be promulgated. There are no provisions in the Tax Law or the Administrative Code of the City of New York that exclude employers located in rural areas from the withholding requirements.

5. Rural area participation: The following organizations are being given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Committee of the Business Council of New York State; the Retail Council of New York State; the New York Association of Convenience Stores; the Tax Section of the New York State Bar Association; the Association of the Bar of the City of New York; the New York State Society of Enrolled Agents; the New York State Society of CPAs; and the Taxation Committee of the Business Council of New York State. In addition, the City of New York was consulted.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no adverse impact on jobs and employment opportunities. The purpose of the rule is to provide City of New York withholding tables and other methods, applicable for compensation paid on or after January 1 2016, which reflect the revision of the New York City rate enacted pursuant to Chapter 59 of the Laws of 2015.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Metropolitan Transportation Business Tax Surcharge

I.D. No. TAF-13-16-00005-EP
Filing No. 311
Filing Date: 2016-03-15
Effective Date: 2016-03-15

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

Proposed Action: Addition of Part 9 to Title 20 NYCRR.

Statutory authority: Tax Law, subdivision First of section 171 and subdivision First of section 209-B; and L. 2014, ch. 59, part A, section 7

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

Specific reasons underlying the finding of necessity: The purpose of the rule is to add a new Part 9 to 20 NYCRR, to implement section 209-B of the Tax Law, as amended by Section 7 of Part A of Chapter 59 of the Laws of 2014. Section 209-B, as amended, generally imposes a tax surcharge on every corporation subject to section 209 of the Tax Law, other than a New York S corporation, for the privilege of exercising the corporation's corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office, or of deriving receipts from activity in the metropolitan commuter transportation district, for all or any part of the corporation's taxable year.

The Commissioner is required, pursuant to section 209-B(1)(f) of the Tax Law, to adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2016. The rate is to be adjusted as necessary to ensure that the receipts attributable to the surcharge will meet and not exceed the financial projections for state fiscal year 2016-2017, as reflected in the enacted budget for that fiscal year.

Section 209-B(1)(e) of the Tax Law requires the Commissioner to adjust the thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge, after reviewing, at the end of each year, the cumulative percentage change in the consumer price index and adjusting such receipts thresholds if the consumer price index has changed by 10 percent or more since January 1, 2015 or since the date that the thresholds were last adjusted by the Commissioner.

These rules are being adopted on an emergency basis in order to have the metropolitan transportation business tax surcharge rate for Tax Year 2016 in place on January 1, 2016, and to continue to have the rate in effect until the permanent rule establishing the rate is adopted.

Subject: Metropolitan Transportation Business Tax Surcharge.

Purpose: To provide metropolitan transportation business tax rate for tax year 2016.

Substance of emergency/proposed rule (Full text is posted at the following State website:https://www.tax.ny.gov/): The purpose of the rule is to add a new Part 9 to 20 NYCRR, to implement section 209-B of the Tax Law, as amended by Section 7 of Part A of Chapter 59 of the Laws of 2014. Section 209-B, as amended, generally imposes a tax surcharge on every corporation subject to section 209 of the Tax Law, other than a New York S corporation, for the privilege of exercising the corporation's corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office, or of deriving receipts from activity in the metropolitan commuter transportation district, for all or any part of the corporation's taxable year.

The Commissioner is required, pursuant to section 209-B(1)(f) of the Tax Law, to adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2016. The rate is to be adjusted as necessary to ensure that the receipts attributable to the surcharge will meet and not exceed the financial projections for state fiscal year 2016-2017, as reflected in the enacted budget for that fiscal year.

Part 9 complies with the mandate of section 209-B(1)(f), setting forth the rate for taxable years beginning on or after January 1, 2016. The previously established statutory rate was 25.6 percent of the tax imposed under section 209 of the Tax Law. As required by section 209-B(1)(f), the commissioner has computed the metropolitan transportation business tax surcharge, using the state fiscal year 2016-2017 fiscal projections, at the rate of 28 percent of the tax imposed under section 209 of the Tax Law for taxable years beginning on or after January 1, 2016 and before January 1, 2017.

Part 9 also implements section 209-B(1)(e) of the Tax Law, which requires the Commissioner to adjust the thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge, after reviewing, at the end of each year, the cumulative percentage change in the consumer price index and adjusting such receipts thresholds if the consumer price index has changed by 10 percent or more since January 1, 2015 or since the date that the thresholds were last adjusted by the Commissioner.

The thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge will not be changed beginning on or after January 1, 2016, but will remain the same as set forth in section 209-B(1) of the Taw Law, since the Commissioner has reviewed the cumulative percentage change in the consumer price index, under section 209-B(1)(e) of the Tax Law, and found that the consumer price index has not changed by 10 percent or more since January 1, 2015. The thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge will remain the same as set forth in section 209-B(1) of the Taw Law until such time as the Commissioner next reviews the cumulative percentage change in the consumer price index and adjusts such receipts thresholds.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire May 13, 2016.

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist 1, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: Kathleen.OConnell@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

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 209-B of the Tax Law generally imposes a tax surcharge on every corporation subject to section 209 of the Tax Law, other than a New York S corporation, for the privilege of exercising the corporation's corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office, or of deriving receipts from activity in the metropolitan commuter transportation district, for all or any part of the corporation's taxable year. Section 7 of Part A of Chapter 59 of the Laws of 2014 amended Tax Law, section 209-B(1)(f) to require the Commissioner to adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2016. Section 7 of Part A of Chapter 59 also amended Tax Law, section 209-B(1)(e) to require the Commissioner to adjust the thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge.

2. Legislative objectives: New Part 9 of the Business Corporation Franchise Tax regulations complies with the mandate of section 209-B(1)(f), as amended, setting forth the rate for taxable years beginning on or after January 1, 2016. The previously established statutory rate was 25.6 percent of the tax imposed under section 209 of the Tax Law. As required by section 209-B(1)(f), the commissioner has computed the metropolitan transportation business tax surcharge, using the state fiscal year 2016-2017 fiscal projections, at the rate of 28 percent of the tax imposed under section 209 of the Tax Law for taxable years beginning on or after January 1, 2016 and before January 1, 2017.

Part 9 also implements section 209-B(1)(e) of the Tax Law, which requires the Commissioner to adjust the thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge, after reviewing, at the end of each year, the cumulative percentage change in the consumer price index and adjusting such receipts thresholds if the consumer price index has changed by 10 percent or more since January 1, 2015 or since the date that the thresholds were last adjusted by the Commissioner.

The thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge will not be changed beginning on or after January 1, 2016, but will remain the same as set forth in section 209-B(1) of the Taw Law, since the Commissioner has reviewed the cumulative percentage change in the consumer price index, under section 209-B(1)(e) of the Tax Law, and found that the consumer price index has not changed by 10 percent or more since January 1, 2015. The thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge will remain the same as set forth in section 209-B(1) of the Taw Law until such time as the Commissioner next reviews the cumulative percentage change in the consumer price index and adjusts such receipts thresholds.

3. Needs and benefits: This rule sets forth amendments to the Business Corporation Franchise Tax regulations reflecting amendments to Tax Law, section 209-B contained in Chapter 59 of the Laws of 2014, This rule benefits taxpayers by putting in place the metropolitan transportation business tax surcharge effective January 1, 2016 for Tax Year 2016.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: There is no additional cost or burden to comply with these amendments. There is no additional time period needed for compliance.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to make amendments to the New York State Business Corporation Franchise Tax regulations under Article 9 of the Tax Law arises due to the statutory changes mandating that the commissioner adjust the metropolitan transportation business tax surcharge and thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis Bureau of Tax and Fiscal Studies, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: Local governments, as employers, would be required to implement the new withholding tables and other methods in the same manner and at the same time as any other employer.

6. Paperwork: This rule will not require any new forms or information. The reporting requirements for employers are not changed by this rule.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since section 209-B, as amended by Section 7 of Part A of Chapter 59 of the Laws of 2014 requires that the commissioner adjust, under certain circumstances, the metropolitan transportation business tax surcharge and thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district, there are no viable alternatives to providing such rate and threshold adjustments using the methodology prescribed in Tax Law, section 209-B.

9. Federal standards: This rule does not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance schedule: The required rate information has been made available to regulated parties, by means of the emergency adoption of New Part 9 of the Business Corporation Franchise Tax regulations on December 31, 2015, in sufficient time to implement the rate effective January 1, 2016. This rule readopts the rule establishing the rate as an emergency measure and proposes it as a permanent rule.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because it will not impose any adverse economic impact or any additional reporting, recordkeeping, or other compliance requirement on small businesses or local governments.

The purpose of the rule is to add a new Part 9 to 20 NYCRR, to implement section 209-B of the Tax Law, as amended by Section 7 of Part A of Chapter 59 of the Laws of 2014. Section 209-B, as amended, generally imposes a tax surcharge on every corporation subject to section 209 of the Tax Law, other than a New York S corporation, for the privilege of exercising the corporation's corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office, or of deriving receipts from activity in the metropolitan commuter transportation district, for all or any part of the corporation's taxable year.

The Commissioner is required, pursuant to section 209-B(1)(f) of the Tax Law, to adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2016. The rate is to be adjusted as necessary to ensure that the receipts attributable to the surcharge will meet and not exceed the financial projections for state fiscal year 2016-2017, as reflected in the enacted budget for that fiscal year.

Part 9 complies with the mandate of section 209-B(1)(f), setting forth the rate for taxable years beginning on or after January 1, 2016. The previously established statutory rate was 25.6 percent of the tax imposed under section 209 of the Tax Law. As required by section 209-B(1)(f), the com-

missioner has computed the metropolitan transportation business tax surcharge, using the state fiscal year 2016-2017 fiscal projections, at the rate of 28 percent of the tax imposed under section 209 of the Tax Law for taxable years beginning on or after January 1, 2016 and before January 1, 2017.

Part 9 also implements section 209-B(1)(e) of the Tax Law, which requires the Commissioner to adjust the thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge, after reviewing, at the end of each year, the cumulative percentage change in the consumer price index and adjusting such receipts thresholds if the consumer price index has changed by 10 percent or more since January 1, 2015 or since the date that the thresholds were last adjusted by the Commissioner.

The thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge will not be changed beginning on or after January 1, 2016, but will remain the same as set forth in section 209-B(1) of the Taw Law, since the Commissioner has reviewed the cumulative percentage change in the consumer price index, under section 209-B(1)(e) of the Tax Law, and found that the consumer price index has not changed by 10 percent or more since January 1, 2015. The thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge will remain the same as set forth in section 209-B(1) of the Taw Law until such time as the Commissioner next reviews the cumulative percentage change in the consumer price index and adjusts such receipts thresholds.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on any rural areas. The purpose of the rule is to add a new Part 9 to 20 NYCRR, to implement section 209-B of the Tax Law, as amended by Section 7 of Part A of Chapter 59 of the Laws of 2014. Section 209-B, as amended, generally imposes a tax surcharge on every corporation subject to section 209 of the Tax Law, other than a New York S corporation, for the privilege of exercising the corporation's corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office, or of deriving receipts from activity in the metropolitan commuter transportation district, for all or any part of the corporation's taxable year.

The Commissioner is required, pursuant to section 209-B(1)(f) of the Tax Law, to adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2016. The rate is to be adjusted as necessary to ensure that the receipts attributable to the surcharge will meet and not exceed the financial projections for state fiscal year 2016-2017, as reflected in the enacted budget for that fiscal year.

Part 9 complies with the mandate of section 209-B(1)(f), setting forth the rate for taxable years beginning on or after January 1, 2016. The previously established statutory rate was 25.6 percent of the tax imposed under section 209 of the Tax Law. As required by section 209-B(1)(f), the commissioner has computed the metropolitan transportation business tax surcharge, using the state fiscal year 2016-2017 fiscal projections, at the rate of 28 percent of the tax imposed under section 209 of the Tax Law for taxable years beginning on or after January 1, 2016 and before January 1, 2017.

Part 9 also implements section 209-B(1)(e) of the Tax Law, which requires the Commissioner to adjust the thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge, after reviewing, at the end of each year, the cumulative percentage change in the consumer price index and adjusting such receipts thresholds if the consumer price index has changed by 10 percent or more since January 1, 2015 or since the date that the thresholds were last adjusted by the Commissioner.

The thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge will not be changed beginning on or after January 1, 2016, but will remain the same as set forth in section 209-B(1) of the Taw Law, since the Commissioner has reviewed the cumulative percentage change in the consumer price index, under section 209-B(1)(e) of the Tax Law, and found that the consumer price index has not changed by 10 percent or more since January 1, 2015. The thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge will remain the same as set forth in section 209-B(1) of the Taw Law until such time as the Commissioner next reviews the cumulative percentage change in the consumer price index and adjusts such receipts thresholds.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it will have no adverse impact on jobs and employment opportunities. The purpose of the rule is to add a new Part 9 to 20 NYCRR, to implement section 209-B of the Tax Law, as amended by Section 7 of Part A of Chapter 59 of the Laws of 2014. Section 209-B, as amended, generally imposes a tax surcharge on every corporation subject to section 209 of the Tax Law, other than a New York S corporation, for the privilege of exercising the corporation's corporate franchise, or of doing business, or of employing capital, or of owning or leasing property in a corporate or organized capacity, or of maintaining an office, or of deriving receipts from activity in the metropolitan commuter transportation district, for all or any part of the corporation's taxable year.

The Commissioner is required, pursuant to section 209-B(1)(f) of the Tax Law, to adjust the rate of the metropolitan transportation business tax surcharge for taxable years beginning on or after January 1, 2016. The rate is to be adjusted as necessary to ensure that the receipts attributable to the surcharge will meet and not exceed the financial projections for state fiscal year 2016-2017, as reflected in the enacted budget for that fiscal year.

Section 209-B(1)(e) of the Tax Law, as amended, requires the Commissioner to adjust the thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district for purposes of imposing the metropolitan transportation business tax surcharge, after reviewing, at the end of each year, the cumulative percentage change in the consumer price index and adjusting such receipts thresholds if the consumer price index has changed by 10 percent or more since January 1, 2015 or since the date that the thresholds were last adjusted by the Commissioner.

This rule merely complies with the mandates of section 209-B of the Tax Law, as amended by Section 7 of Part A of Chapter 59 of the Laws of 2014, by adding a new Part 9 to 20 NYCRR, setting forth the rate for the metropolitan business transportation tax surcharge for Tax Year 2016 and establishing that the thresholds at which a corporation is deemed to be deriving receipts from activity in the metropolitan commuter transportation district will not be adjusted for Tax Year 2016.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Production of Daily Inventory Records to the Department, Upon Request, by Those Already Required to Maintain Such Records

I.D. No. TAF-13-16-00006-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 533.2(e) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First and 1135(d)

Subject: Production of daily inventory records to the department, upon request, by those already required to maintain such records.

Purpose: To provide the department access to relevant existing data, in furtherance of the administration of the Tax Law.

Text of proposed rule: Section 1. Subdivision (e) of section 533.2 of such regulations is amended, to add a new paragraph 8, to read as follows:

(8) Every person subject to the inventory monitoring for underground storage facilities requirements in New York State Department of Environmental Conservation Regulation 6 NYCRR 613, as may be amended from time to time, must maintain daily inventory records for each tank (or battery of tanks if they are interconnected) and provide or make available those records upon request by the New York State Department of Taxation and Finance.

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, 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

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 1135(d) requires persons selling or holding large volumes of petroleum to keep records for such periods and in the manner prescribed by the commissioner pursuant to rules and regulations. Section 1135(d) delineates certain information such records shall contain, including the number of gallons of petroleum products purchased and sold,

together with such additional information as the commissioner shall require.

2. Legislative objectives: The rule amends section 533.2(e) of the regulations to require that every person subject to the inventory monitoring for underground storage facilities requirements in New York State Department of Environmental Conservation Regulation 6 NYCRR 613 that must already maintain daily inventory records for each tank (or battery of tanks if they are interconnected) must also provide or make available those records upon request by the New York State Department of Taxation and Finance. These inventory records are already required to be kept, and provide detailed information to the department regarding the volume of petroleum being stored on a daily basis. This information is relevant in examining taxpayers' books and records in the administration of the Tax Law.

3. Needs and benefits: The rule requires that every person subject to the inventory monitoring for underground storage facilities requirements in New York State Department of Environmental Conservation Regulation 6 NYCRR 613 that must already maintain daily inventory records for each tank (or battery of tanks if they are interconnected) must also provide or make available those records upon request by the New York State Department of Taxation and Finance. This rule furthers the administration of the tax law by providing the department with accurate, detailed information, to ensure that the appropriate amount of tax is remitted in connection with the purchase and sale of petroleum products. The rule imposes no additional burdens on regulated parties in that it merely requires them to produce records they are already required to maintain under Department of Environmental Conservation regulations.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: Since section 1135(d) of the Tax Law already requires persons selling or holding large volumes of petroleum to keep records for such periods and in the manner prescribed by the commissioner pursuant to rules and regulations, and this rule requires only those persons already required to maintain daily inventory records under Department of Environmental Conservation regulations to provide or make available these records upon request by the department, the rule imposes no additional costs on regulated parties.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: the rule provides for the production of daily inventory records in the discretion of the department. No additional costs are imposed on the agency for the implementation and continuation of the rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Taxpayer Guidance Division, Office of Tax Policy Analysis, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: The rule imposes no local government mandates.

6. Paperwork: This rule will not require any new forms or information.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since the daily inventory records subject to production are already required to be compiled and maintained under Department of Environmental Conservation regulations, there are no preferable viable alternatives.

9. Federal standards: This rule does not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance schedule: Because the information in question is already required to be compiled and maintained, production upon request will be required when the rule becomes effective, upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because it will not impose any adverse economic impact or any additional reporting, recordkeeping, or other compliance requirement on small businesses or local governments. Section 1135(d) of the Tax Law requires persons selling or holding large volumes of petroleum to keep records for such periods and in the manner prescribed by the commissioner pursuant to rules and regulations. Section 1135(d) delineates certain information such records shall contain, including the number of gallons of petroleum products purchased and sold, together with such additional information as the commissioner shall require. The rule amends section 533.2(e) of 20 NYCRR to require that every person subject to the inventory monitoring for underground storage facilities requirements in New York State Department of Environmental Conservation Regulation 6 NYCRR 613 that must already maintain daily inventory records for each tank (or battery of tanks if they are interconnected) must also provide or make available those records upon request by the New York State Department of Taxation and Finance.

The purpose of this rule is to provide to the department, in the administration of the Tax Law, access to daily inventory records already required to be maintained.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on any rural areas. A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this rule because it will not impose any adverse economic impact or any additional reporting, recordkeeping, or other compliance requirement on small businesses or local governments. Section 1135(d) of the Tax Law requires persons selling or holding large volumes of petroleum to keep records for such periods and in the manner prescribed by the commissioner pursuant to rules and regulations. Section 1135(d) delineates certain information such records shall contain, including the number of gallons of petroleum products purchased and sold, together with such additional information as the commissioner shall require. The rule amends section 533.2(e) of 20 NYCRR to require that every person subject to the inventory monitoring for underground storage facilities requirements in New York State Department of Environmental Conservation Regulation 6 NYCRR 613 that must already maintain daily inventory records for each tank (or battery of tanks if they are interconnected) must also provide or make available those records upon request by the New York State Department of Taxation and Finance.

The purpose of this rule is to provide to the department, in the administration of the Tax Law, access to daily inventory records already required to be maintained.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter that the rule will have no impact on jobs and employment opportunities. The purpose of the rule is merely to require that every person subject to the inventory monitoring for underground storage facilities requirements in New York State Department of Environmental Conservation Regulation 6 NYCRR 613 that must already maintain daily inventory records for each tank (or battery of tanks if they are interconnected) must also provide or make available those records upon request by the New York State Department of Taxation and Finance.