

# 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.

---

---

## Banking Department

---

---

### NOTICE OF ADOPTION

#### Security Measures at Automated Teller Machine (ATM) Facilities - Report of Compliance

**I.D. No.** BNK-37-10-00003-A

**Filing No.** 56

**Filing Date:** 2011-01-11

**Effective Date:** 2011-01-26

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

**Action taken:** Amendment of section 301.6 of Title 3 NYCRR.

**Statutory authority:** Banking Law, sections 12 and 75-n

**Subject:** Security Measures at Automated Teller Machine (ATM) Facilities - Report of Compliance.

**Purpose:** To improve required reporting on security at automated teller facilities and to require follow up corrective actions.

**Text or summary was published** in the September 15, 2010 issue of the Register, I.D. No. BNK-37-10-00003-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Sam L. Abram, Secretary of the Banking Board, New York State Banking Department, One State Street, New York, NY 10004-1417, (212) 709-1658, email: sam.abram@banking.state.ny.us

#### Assessment of Public Comment

The Department received one comment regarding the proposed amendment. The commenter, an industry association for banking institutions, expressed the view that the requirement that submissions

must be made under penalty of perjury requirement is unwarranted and excessive. The commenter also suggested that institutions be permitted to provide the required reports electronically.

There is ample authority and precedent for requiring reports to the Department to be made under penalty of perjury. Section 125(2) of the Banking Law gives the superintendent the power to require that specific reports by banks and trust companies be so made. Moreover, various provisions of the Banking Law specifically impose such a requirement in the case of particular reports (see, e.g., Sections 329, 404(1) and 513; see also Section 204).

The Department believes that the applying the penalty of perjury requirement to annual compliance reports under the ATM Safety Act is appropriate because such reports involve self certification by reporting institutions on a matter of public safety.

The Department strongly believes that electronic filing of reports by the entities it regulates benefits both such entities and the Department. For that reason, the Department has repeatedly proposed legislation which would affirmatively require electronic filing of reports to the Department by its regulated entities, unless such requirement is waived by the Superintendent. Under Section 309 of the State Technology Law, such affirmative legislation is necessary in order for the Department to require an entity to use an electronic record. Although the Legislature has not heretofore seen fit to enact the proposed legislation, the Department expects to continue seeking such legislative relief.

---

---

## Department of Environmental Conservation

---

---

### NOTICE OF WITHDRAWAL

#### Otter Creek Trail System Assembly Area

**I.D. No.** ENV-01-11-00004-W

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

**Action taken:** Notice of proposed rule making, I.D. No. ENV-01-11-00004-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on January 5, 2011.

**Subject:** Otter Creek Trail System Assembly Area.

**Reason(s) for withdrawal of the proposed rule:** Still under development.

### NOTICE OF ADOPTION

#### Regulations for the CWSRF Program Co-Administered by DEC and the NYS Environmental Facilities Corporation (EFC)

**I.D. No.** ENV-20-10-00015-A

**Filing No.** 10

**Filing Date:** 2011-01-07

**Effective Date:** 2011-01-26

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

**Action taken:** Revisions to 6 NYCRR Part 649 in order to incorporate the provisions of the Water Pollution Control Linked Deposit Program Act (Act), under the Clean Water State Revolving Fund (CWSRF).

**Statutory authority:** Environmental Conservation Law, sections 3-0301, 15-0313, 17-030117-1909(3); Public Authorities Law, sections 1284(5) and 1285-j(4); State Finance Law, section 243

**Subject:** The regulations for the CWSRF program co-administered by DEC and the NYS Environmental Facilities Corporation (EFC).

**Purpose:** To set forth rules to implement the statutory provisions of the Water Pollution Control Linked Deposit Act.

**Text or summary was published** in the May 19, 2010 issue of the Register, I.D. No. ENV-20-10-00015-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Robert Simson, New York State Department of Environmental Conservation, Division of Water, 625 Broadway, Albany, NY 12233-3500, (518) 402-8271, email: rjsimson@gw.dec.state.ny.us

#### Assessment of Public Comment

1. Written comment dated June 29, 2010, was received from Farm Credit East (FCE), 2668 State Route 7, Cobleskill, New York 12043-9707, which expressed support for the proposed amendment to rule 21 NYCRR Part 2602. FCE is a federally chartered Farm Credit institution and has expressed an interest in being a lender under the proposed Water Pollution Control Linked Deposit Act (WPCLDA) and Linked Deposit Program and it stated it would actively facilitate the use of the program in order that eligible borrowers may receive the financial benefit from this program. FCE also stated that the implementation of this program comes at an important time due to the need to implement environmentally related projects and the fact that agricultural market conditions have declined precipitously over the past few years. The FCE did not raise any issues regarding the text of the proposed amendment to rule 6 NYCRR Part 649 and did not request or suggest any significant alternative language to said proposed amendment.

Agency's response: The Agency agrees, no changes made.

2. Written comment dated July 6, 2010 was received from the New York Farm Bureau (NYFB), 159 Wolf Road, Albany, New York P.O. Box 5330, which expressed support for the proposed amendment to rule 21 NYCRR Part 2602. The NYFB stated that it strongly supports the amendments authorizing the expansion of the Clean Water State Revolving Fund (CWSRF) to agricultural projects and urged the implementation of the regulations so that farms can participate in this general program. The NYFB also stated that farmers recognize the importance of clean water and, in many cases, want to do more than they already have to protect our natural resources and that, by allowing farms to participate in the CWSRF, another tool will be provided to ease the burden of implementing new projects and to help farms further protect water quality. The NYFB stated that the draft regulations appear to implement the WPCLDA in an appropriate manner and did not request or suggest any significant alternative language to the text of the proposed amendment to rule 6 NYCRR Part 649.

Agency's response: the Agency agrees, no changes made.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Summary Abatement Orders

I.D. No. ENV-04-11-00002-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 Part 620 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, section 71-0301

**Subject:** Summary Abatement Orders.

**Purpose:** To make regulation consistent with statutory language; to clarify the documentation required to obtain order; to update language.

**Text of proposed rule:** Section 620.1 is amended to read as follows:

620.1 Definitions. As used in this Part, unless the context otherwise requires:

(a) *Administrative law judge or ALJ* means the commissioner's representative who conducts the hearing.

(b) Commissioner means the Commissioner of Environmental Conservation or [his] the commissioner's duly authorized representative.

[(b)] (c) Department means the Department of Environmental Conservation.

(d) *Department staff* means those department personnel participating in the hearing, but does not include the commissioner, any personnel of the Office of Hearings and Mediation Services, the ALJ or those advising them.

[c] (e) Person means any individual, firm, partnership, association, corporation, trust, and estate; any State department, agency, board, public benefit corporation, public authority or commission; or any unit of local government, including any village, town, city, county, board district, commission, governing body, and any other political subdivision of the State.

[d] (f) Respondent means any person who has received a summary abatement order under these regulations.

Subdivision 620.2(a) remains unchanged.

Subdivision 620.2(b) is amended to read as follows:

(b) Such order may be oral, telephonic, in writing, or in such other form as will, in the commissioner's judgment give reasonable notice to the person. Notice which is not given in writing will be supplemented as soon as is practicable thereafter with a written summary abatement order. A written summary abatement order shall state the grounds upon which the order is based[.], and shall be accompanied by evidence documenting the material facts supporting the order.

Subdivision 620.2(c) remains unchanged.

Subdivision 620.3(a) is amended to read as follows:

(a) The commissioner shall schedule a hearing promptly, at a time and place which [he] the commissioner shall determine, not to exceed 15 days from the date when the summary abatement order is given. Notice of such hearing shall be served upon or otherwise provided to the respondent with the written summary abatement order.

Subdivision 620.3(b) is amended to read as follows:

(b) At the hearing, *department staff bears the burden of persuasion on all charges and matters affirmatively asserted in the summary abatement order. Department staff may meet its burden by submission of the supporting materials that accompanied the summary abatement order. At the hearing, department staff may also present testimony and evidence that supplements the supporting materials that accompanied the summary abatement order. At the hearing, the respondent shall have the [burden of proving] opportunity to be heard and the burden to produce evidence that such condition or activity which is the subject of the summary abatement order does not come within the provisions of subdivision (a) of section 620.2 of this Part. The respondent bears the burden of persuasion regarding all affirmative defenses. Both the respondent and department staff shall have the right of cross-examination.*

Subdivision 620.3(c) remains unchanged.

Subdivisions 620.3(d) through 620.3(h) are amended to read as follows:

(d) The hearing shall be before [a hearing officer] *an administrative law judge* designated by the commissioner. The [hearing officer] ALJ shall cause a record of the hearing to be made, and shall make a report to the commissioner setting forth the appearances, the relevant facts and arguments presented at the hearing, findings of fact and conclusions of law, a recommendation on whether the order should be continued, modified or vacated and the reasons for this recommendation.

(e) The [hearing officer] ALJ shall, to the extent practicable, and without prejudice to the respondent's right to have a public hearing concerning the issuance of a summary abatement order within 15 days from the date the order is given, consolidate the hearing on the issuance of the summary abatement order with any hearing to be held on account of respondent's violation of the environmental conservation law, or any order, rule or regulation issued or promulgated thereunder.

(f) The [hearing officer] ALJ shall have the powers and authority provided to the presiding officer under the State Administrative Procedure Act. [He] The ALJ may receive testimony or statements in written form, if the witness is presented to authenticate his or her statement and for cross-examination, or if the parties so stipulate.

(g) The record of the hearing may be made by a stenographer, by a tape recorder, by other electronic recording device or by other means.

The [hearing officer] ALJ shall cause a typed transcript of the record to be prepared for the department’s files, but shall not wait for the preparation of this transcript before making a report to the commissioner, if so requested by the respondent or the commissioner.

(h) The [hearing officer] ALJ shall make a report in writing to the commissioner within 30 days of the close of the hearing, unless the parties agree to an extension of this time.

New subdivision 620.3(i) is adopted as follows:

(i) *The provisions of Part 622 of this title (Uniform Enforcement Hearing Procedures) apply to hearings on summary abatement orders except to the extent inconsistent with the provisions of this Part.*

Section 620.4 remains unchanged.

**Text of proposed rule and any required statements and analyses may be obtained from:** Helene Goldberger, Administrative Law Judge, NYSDEC Office of Hearings and Mediation Services, 625 Broadway, 1st Floor, Albany, NY 12233-1550, (518) 402-9003, email: hggoldbe@gw.dec.state.ny.us

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

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

**Consensus Rule Making Determination**

The Department of Environmental Conservation has determined that this proposed rule amendment is a “consensus rule” as defined by SAPA 102(11). These proposed changes are to make the language of the statute and the regulations governing summary abatement orders uniform (Environmental Conservation Law [ECL] § 71-0301 and § 620.3(b) of Title 6 of the New York Compilation of Codes, Rules and Regulations [6 NYCRR]); to provide detail regarding the documentation that the Department staff provides in support of a motion for summary abatement consistent with current practice; and to make some minor changes in language – changing “hearing officer” to “administrative law judge” and making certain words gender neutral.

These changes are minor and for clarification purposes only; they do not change any practices regarding summary abatement proceedings. Therefore, we do not anticipate any objections to this proposal.

**Job Impact Statement**

A Job Impact Statement is not submitted with this proposal because the proposed amendments to Part 620 will have no adverse impact on existing or future jobs and employment opportunities. The proposed amendments do not change any substantive requirements. They are strictly to: a) clarify a provision concerning burden of proof that is consistent with the implementing statutory requirement and current practice; b) provide additional detail about the supporting documents and procedures that are consistent with current Department summary abatement order procedures; and c) update terms. These changes are minor and are being proposed as a consensus rulemaking. This proposal does not impose any regulatory mandate on the regulated community, nor does it require any businesses to purchase or modify any equipment, purchase any special permit or license or modify the means by which it conducts business. Consequently, there could be no adverse impact on existing or future jobs and employment opportunities. This conclusion was reached based upon the Department’s determination that there will be no adverse cost impact from this action.

---



---

## Environmental Facilities Corporation

---



---

### NOTICE OF ADOPTION

**Proposed Regulations Are for the CWSRF Program Co-Administered by EFC and the NYS Department of Environmental Conservation**

**I.D. No.** EFC-20-10-00003-A

**Filing No.** 50

**Filing Date:** 2011-01-07

**Effective Date:** 2011-01-26

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

**Action taken:** Amendment of Part 2602 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, sections 1284(5) and 1285-j(4); State Finance Law, section 243

**Subject:** The proposed regulations are for the CWSRF Program co-administered by EFC and the NYS Department of Environmental Conservation.

**Purpose:** To set forth rules to implement the statutory provisions of the Water Pollution Control Linked Deposit Act.

**Text or summary was published in** the May 19, 2010 issue of the Register, I.D. No. EFC-20-10-00003-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Michael P. Hale, Esq., Deputy Counsel, New York State Environmental Facilities Corporation, 625 Broadway, Albany, New York 12207-2997, (518) 402-6968, email: michael.hale@efc.ny.gov

**Assessment of Public Comment**

1. Written comment dated June 29, 2010, was received from Farm Credit East (FCE), 2668 State Route 7, Cobleskill, New York 12043-9707, which expressed support for the proposed amendment to rule 21 NYCRR Part 2602. FCE is a federally chartered Farm Credit institution and has expressed an interest in being a lender under the proposed Water Pollution Control Linked Deposit Act (WPCLDA) and Linked Deposit Program and it stated it would actively facilitate the use of the program in order that eligible borrowers may receive the financial benefit from this program. FCE also stated that the implementation of this program comes at an important time due to the need to implement environmentally related projects and the fact that agricultural market conditions have declined precipitously over the past few years. The FCE did not raise any issues regarding the text of the proposed amendment to rule 21 NYCRR Part 2602 and did not request or suggest any significant alternative language to said proposed amendment.

Agency’s response: The Agency agrees.

2. Written comment dated July 6, 2010 was received from the New York Farm Bureau (NYFB), 159 Wolf Road, Albany, New York P.O. Box 5330, which expressed support for the proposed amendment to rule 21 NYCRR Part 2602. The NYFB stated that it strongly supports the amendments authorizing the expansion of the Clean Water State Revolving Fund (CWSRF) to agricultural projects and urged the implementation of the regulations so that farms can participate in this general program. The NYFB also stated that farmers recognize the importance of clean water and, in many cases, want to do more than they already have to protect our natural resources and that, by allowing farms to participate in the CWSRF, another tool will be provided to ease the burden of implementing new projects and to help farms further protect water quality. The NYFB stated that the draft regulations appear to implement the WPCLDA in an appropriate manner and did not request or suggest any significant alternative language to the text of the proposed amendment to rule 21 NYCRR Part 2602.

Agency’s response: the Agency agrees.

---



---

## Higher Education Services Corporation

---



---

### NOTICE OF ADOPTION

**New York Higher Education Loan Program (NYHELPS)**

**I.D. No.** ESC-47-10-00014-A

**Filing No.** 54

**Filing Date:** 2011-01-11

**Effective Date:** 2011-01-26

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

**Action taken:** Amendment of Part 2213 and section 2004.1 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 691(10) and 655(4)

**Subject:** New York Higher Education Loan Program (NYHELPS).

**Purpose:** Amend several provisions of the regulation.

**Text or summary was published** in the November 24, 2010 issue of the Register, I.D. No. ESC-47-10-00014-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Cheryl B. Fisher, Supervising Attorney, New York State Higher Education Services Corporation, 99 Washington Avenue, Room #1315, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.org

**Assessment of Public Comment**

The agency received no public comment.

## Insurance Department

### EMERGENCY RULE MAKING

#### Life Settlements

**I.D. No.** INS-04-11-00005-E

**Filing No.** 55

**Filing Date:** 2011-01-11

**Effective Date:** 2011-01-11

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

**Action taken:** Addition of Part 381 (Regulation 198) to Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 2137, 7803 and 7804; as added by L. 2009, ch. 499 and L. 2009, ch. 499, section 21

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

**Specific reasons underlying the finding of necessity:** This part sets forth the license fees for life settlement providers and life settlement brokers, registration fees for life settlement intermediaries and financial accountability requirements for life settlement providers as required under sections 2137, 7803, and 7804 of the Insurance Law as added by Chapter 499 of the Laws of 2009. These sections, along with other sections of the new life settlement legislation, became effective May 18, 2010.

These sections of the Insurance Law require licensing and registration of life settlement providers, life settlement intermediaries and life settlement brokers. In order to license and register these persons, the fees associated with the licensing and registration, as well as financial accountability requirements which life settlement providers must demonstrate at licensing, must first be established by regulation as required by the legislation. The licensing of these entities is a critical aspect of the new life settlement law in order to properly safeguard the public in life settlement transactions.

Section 21 of Chapter 499 of the Laws of 2009 permits a person lawfully operating as a life settlement provider, life settlement intermediary, or life settlement broker in this state with respect to life settlement transactions not heretofore regulated under the Insurance Law to continue to do so pending approval or disapproval of the person's application for license or registration, if such person files the appropriate application with the Superintendent not later than 30 days after the Superintendent publishes the application on the Department's website and certifies that the applicant shall comply with all applicable provisions of the Insurance Law and regulations promulgated thereunder. Because the law provides that the Superintendent must establish the application filing fees for licensing of life settlement providers and brokers, and the registration of life settlement intermediaries, and financial accountability requirements for life settlement providers, and such constitutes rulemaking under the State Administrative Procedure Act, it is critical that these fees be established and maintained in effect on an emergency basis to facilitate the processing of these applications. Otherwise, life settlement providers, life settlement intermediaries and life settlement brokers will be able to continue to operate in New York without applying for licensing or registration and thereby engaging in life settlement transactions without being licensed by or registered with the Superintendent, which will not adequately protect the public. It is also critical that the fees established by this emergency regulation remain in effect in order for the Department to continue to accept new applications for licensure by life settlement providers, life settlement intermediaries and life settlement brokers. If the Department was unable to accept new applications for licensure, a competitive disadvantage for new applicants seeking such licensure could result.

The Department is still focused on the issues that need to be addressed regarding licensing (e.g., processing of submitted licensing applications; establishing internal procedures, processes and systems; responding to life settlement issues and inquiries). The Department also continues to be engaged in outreach to interested parties to get their input regarding the additional provisions to be added to the regulation.

For the reasons stated above, an emergency adoption of Regulation No. 198 is necessary for the general welfare.

**Subject:** Life Settlements.

**Purpose:** To implement Chapter 499 of the Laws of 2009's provisions of license fees and financial accountability requirements.

**Text of emergency rule:** Chapter XV of Title 11 is renamed "Life Settlements".

**Section 381.1 License fees and financial accountability requirements for life settlement providers.**

(a) The application for a license as a life settlement provider shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee of \$10,000.

(b) The financial accountability of a life settlement provider required in accordance with section 7803(c)(2)(E) of the Insurance Law, to assure the faithful performance of its obligations to owners and insureds on life settlement contracts subject to Article 78 of the Insurance Law, shall be in an amount at least equivalent to \$250,000, shall be maintained at all times and may be evidenced in one of the following manners:

(1) Assets in excess of liabilities in an amount at least equal to \$250,000 as reflected in the applicant's financial statements;

(2) A surety bond in an amount at least equal to \$250,000 placed in trust with the superintendent issued by an insurer licensed in this State to write fidelity and surety insurance under section 1113(a)(16) of the Insurance Law; or

(3) Securities placed in trust with the superintendent consisting of securities of the types specified in section 1402(b)(1) and (2) of the Insurance Law, estimated at an amount not exceeding their current market value, but with a total par value not less than \$250,000; provided that:

(i) If the life settlement provider is incorporated in another state, the securities allowed for placement in the trust may consist of direct obligations of that state; and

(ii) If the aggregate market value of the securities in trust falls below the required amount, the superintendent may require the life settlement provider to deposit additional securities of like character.

(c) The application for the biennial renewal of a life settlement provider license shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee of \$5,000.

**Section 381.2 License fees for life settlement brokers.**

(a) The application for a license as a life settlement broker shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee for each individual applicant and for each proposed sub-licensee of forty dollars for each year or fraction of a year in which a license shall be valid.

(b) The application for the biennial renewal of a life settlement broker license shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee for each individual applicant and for each proposed sub-licensee of forty dollars for each year or fraction of a year in which a license shall be valid.

**Section 381.3 Registration fees for life settlement intermediaries.**

(a) The application for registration as a life settlement intermediary shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee of \$7,500.

(b) The application for the biennial renewal of a life settlement intermediary registration shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee of \$2,500.

**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 April 10, 2011.

**Text of rule and any required statements and analyses may be obtained from:** Andrew Mais, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-2285, email: amais@ins.state.ny.us

**Regulatory Impact Statement**

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 201 and 301 of the Insurance Law, sections 2137, 7803 and 7804 of the Insurance Law as added by Chapter 499 of the Laws of 2009, and section 21 of Chapter 499 of the Laws of 2009.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law and prescribe regulations interpreting the Insurance Law.

Section 2137, as added by Chapter 499 of the Laws of 2009, sets forth

the licensing requirements for life settlement brokers. Section 2137(h)(8) requires licensing and renewal fee be determined by the Superintendent, provided that such fees do not exceed that which is required for the licensing and renewal of an insurance producer with a life line of authority.

Section 7803, as added by Chapter 499 of the Laws of 2009, sets forth the licensing requirements for life settlement providers. Section 7803(c)(1) requires the application for a life settlement provider's license be accompanied by a fee in an amount to be established by the Superintendent. Section 7803(h)(1) provides that an application for renewal of the license be accompanied by a fee in an amount to be established by the Superintendent. Section 7803(c)(2)(E) requires a life settlement provider to demonstrate financial accountability as evidenced by a bond or other method for financial accountability as determined by the Superintendent pursuant to regulation.

Section 7804, as added by Chapter 499 of the Laws of 2009, sets forth the registration requirements for life settlement intermediaries. Section 7804(c)(1) requires the application for a life settlement intermediary registration be accompanied by a fee in an amount to be established by the Superintendent. Section 7804(i)(1) provides that an application for renewal of the registration be accompanied by a fee in an amount to be established by the Superintendent.

Pursuant to State Administrative Procedure Act Section 202, the implementation of the fee requirements under Sections 2137, 7803 and 7804 requires the promulgation of regulations.

Section 21(6) of Chapter 499 of the Laws of 2009 authorizes the Superintendent to promulgate rules and regulations necessary for the implementation of its provisions.

2. Legislative objectives: Sections 2137, 7803, and 7804 of the Insurance Law as added by Chapter 499 of the Laws of 2009, which will become effective May 18, 2010, require the licensing of life settlement providers and life settlement brokers and the registration of life settlement intermediaries. Such sections also provide that the license and registration fees charged these persons and the financial accountability requirements that life settlement providers must demonstrate at licensing shall be established by the Superintendent.

Section 21(6) of Chapter 499 of the Laws of 2009 authorizes the Superintendent to promulgate rules and regulations necessary for the implementation of its provisions. This rule is necessary to implement Sections 2137, 7803 and 7804 of the Insurance Law.

3. Needs and benefits: Section 21 of Chapter 499 of the Laws of 2009 permits a person lawfully operating as a life settlement provider, life settlement intermediary or life settlement broker in this state with respect to life settlement transactions not heretofore regulated under the Insurance Law to continue to do so pending approval or disapproval of the person's application for license or registration, if such person files the appropriate application with the Superintendent not later than 30 days after the Superintendent publishes the application on the Department's website and certifies that the applicant shall comply with all applicable provisions of the Insurance Law and regulations promulgated thereunder. Because the law provides that the Superintendent must establish the application filing fees for licensing of life settlement providers and brokers, and the registration of life settlement intermediaries, and financial accountability requirements for life settlement providers, and such constitutes rulemaking under the State Administrative Procedure Act, it is critical that these fees be established on an emergency basis to facilitate the processing of these applications. Otherwise, life settlement providers, life settlement intermediaries and life settlement brokers will be able to continue to operate in New York without applying for licensing or registration and thereby continue to engage in life settlement transactions without being licensed by or registered with the Superintendent, which will not adequately protect the public. It is also critical that the fees established by this emergency regulation remain in effect in order for the Department to accept new applications for licensure by life settlement providers, life settlement intermediaries and life settlement brokers. If the Department was unable to continue to accept new applications for licensure, a competitive disadvantage for new applicants seeking such licensure could result.

Adoption of this rule establishing license and registration fees and financial accountability requirements is necessary for the timely implementation of the life settlement legislation.

4. Costs: The rule requires an initial license application fee of \$10,000 for life settlement providers and an initial registration application fee of \$7,500 for intermediaries. Licensed providers and intermediaries are required to pay a renewal fee every two years, in the amount of \$5,000 and \$2,500, respectively. The rule also sets an annual license fee of \$40 for life settlement brokers. In addition to paying the licensing fee and renewal fees, a life settlement provider must meet financial accountability requirements by demonstrating its assets exceed its liabilities by \$250,000 at the time of initial licensing and at all times thereafter, or by placing either a surety bond or securities in an amount of not less than \$250,000 in trust with the Superintendent.

In developing the license and renewal fees for life settlement providers, life settlement intermediaries and life settlement brokers, the following were considered:

- New York Insurance Law Section 332 provides that the expenses of the Department for any fiscal year, including all direct and indirect costs, shall be assessed by the Superintendent pro rata upon all domestic insurers and licensed United States branches of alien insurers domiciled in New York. Life settlement providers and life settlement intermediaries are not subject to this assessment. As a result, these expenses will be borne by insurers through the Section 332 assessments, since fees collected by the Superintendent are turned over to the State's general fund, and do not directly reimburse the expenses of the Department. Nonetheless, the Superintendent believes that it is appropriate for the initial and renewal licensing and registration fees charged to life settlement providers and life settlement intermediaries to reflect, if not approximate, the costs and expenses incurred by the Department in implementing this legislation. At the same time, the Superintendent must balance other competing interests: while being reasonable and sufficient to reflect a life settlement provider's or life settlement intermediary's commitment to the New York market and a level of financial resources of such persons that will enable them to create and maintain a compliance structure necessary to ensure the faithful performance of their obligations to owners and insureds on life settlement contracts subject to Insurance Law Article 78, and yet not be too excessive so as to discourage providers and intermediaries with lesser financial resources from seeking licensing or registration. Several factors were considered in arriving at appropriate fees:
- Renewal fees for both life settlement providers and life settlement intermediaries are considerably less than the initial fees. This reflects that expenses incurred on renewal applications are generally lower than on initial application.
- Initial and renewal licensing fees charged to life settlement providers are set at rates greater than initial and renewal registration fees charged to life settlement intermediaries. The differences in such fees reflect the lesser time-based expenses associated with the registration of intermediaries than associated with provider licensing.
- New Insurance Law Sections 2137 provides that the licensing or renewal fees prescribed by the Superintendent for a life settlement broker shall not exceed the licensing or renewal fee for an insurance producer with a life line of authority. In accordance with the statute, this rule sets the licensing and renewal fee for a life settlement broker at \$40, which is equal to the current licensing or renewal fee of an insurance producer with a life line of authority.

In developing the financial accountability requirements that a life settlement provider must comply with, the Superintendent considered the cash outlay of each offered compliance option. The establishment of a surety bond requires the purchase of the surety bond. The deposit of securities with the Superintendent requires the establishment of a custodian account and incurrence of the associated expenses. The maintenance of a required level of assets in excess of liabilities may require the addition of capital where such level is not currently maintained.

The rule does not impose additional costs to the Insurance Department or other state government agencies or local governments.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: No additional paperwork should result from the provisions set by this rule.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: In the development of the licensing and registration fees imposed on life settlement providers and life settlement intermediaries, the Department's draft proposal was premised on the Superintendent retaining the fees to cover Department costs, and the fees were significantly higher than as included in the emergency regulation. However, as noted, such fees are turned over to the State's general fund and thus do not directly reimburse the Department for its expenses.

The Department solicited comments from interested parties on the draft rule, which contained the higher fees. An outreach draft of the rule was posted on the Department's website for a two-week public comment period and a meeting was held at the Department on April 6, 2010 to discuss the rule with interested parties. The Life Insurance Settlement Association (LISA), a life settlement industry trade association, and other life settlement interested parties commented that the intended fees would present a financial barrier for some life settlement providers wishing to compete in the New York marketplace. LISA, as well as other interested parties, took the position that a decreased number of licensed providers in New York inhibits fair competition and industry growth, which would ultimately harm New York policyholders seeking the assistance of the secondary market for life insurance because of the lack of competition. In response

to these comments, the initial license fee for life settlement providers was reduced from \$20,000 to \$10,000 and the initial registration fee for life settlement intermediaries was reduced from \$10,000 to \$7,500.

The Life Insurance Council of New York (LICONY), a life insurance trade association, has expressed support of a licensing and registration fee structure set at a level that is sufficient so that participating entities are paying for the regulation of their industry. The Superintendent attempted to balance the competing interests discussed above to arrive at a fee schedule that would be fair and equitable.

With regard to financial accountability requirements, the outreach draft posted to the Department's website for public comment had provided two options - surety bond and security deposit - to comply with such demonstration. After consideration of the comments received from LISA and other life settlement industry interested parties indicating that these options would create a financial barrier for some providers wishing to enter and operate in the New York market, the Superintendent added a third option that provides a less costly and less capital restrictive compliance alternative. The third option allows a life settlement provider to satisfy the financial accountability requirements by demonstrating that its assets exceed its liabilities by an amount no less than \$250,000. These financial accountability requirements are on a par with the requirements in many other states.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The emergency adoption of this regulation ensures that the fees and financial accountability requirements can be included immediately in the license application for life settlement providers and life settlement brokers and registration application for life settlement intermediaries. To ensure the timely implementation of Sections 2137, 7803, and 7804 of the Insurance Law as added by Chapter 499 of the Laws of 2009, the license application forms for life settlement providers and life settlement brokers and the registration form for life settlement intermediaries need to be published on the Department's website as soon as possible.

The emergency regulation was necessary in order to establish fees and financial accountability standards in order to commence licensing life settlement providers, intermediaries and brokers. Since the emergency regulation went into effect in April, 2010, the Department has focused on the issues that needed to be addressed regarding licensing (e.g., development of licensing applications and processing of submitted applications; establishing internal procedures, processes and systems; responding to life settlement issues and inquiries). The Department continues to be engaged in outreach to interested parties to get their input regarding the additional provisions to be added to the regulation.

#### **Regulatory Flexibility Analysis**

1. Effect of the rule: This rule sets license fees for life settlement providers and life settlement brokers, registration fees for life settlement intermediaries, and financial accountability requirements for life settlement providers.

This rule is directed to life settlement providers, life settlement brokers and life settlement intermediaries. Some of these entities may come within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

This rule should not impose any adverse compliance requirements or adverse impacts on local governments. The basis for this finding is that this rule is directed at the entities allowed to conduct life settlement business, none of which are local governments.

2. Compliance requirements: The affected parties will need to accompany their applications along with fees as prescribed by this rule. Also, each life settlement provider applying for license has to comply with financial accountability requirements by demonstrating that its assets exceeds its liabilities by \$250,000 at the time of initial licensing and at all times thereafter, or by placing either a surety bond or securities in an amount of not less than \$250,000 in trust with the Superintendent.

3. Professional services: None is required to meet the requirements of this rule.

4. Compliance costs: The regulation requires a license fee of \$10,000 for life settlement providers and a registration fee of \$7,500 for life settlement intermediaries. Licensed providers and intermediaries are required to pay a renewal fee every two years, in amount of \$5,000 and \$2,500, respectively. The rule also sets an annual license fee of \$40 for life settlement brokers. In addition to paying the licensing fee and renewal fees, a life settlement provider must comply with financial accountability requirements by demonstrating that its assets exceed its liabilities by \$250,000 at the time of initial licensing and at all times thereafter, or by placing either a surety bond or securities in an amount of not less than \$250,000 in trust with the Superintendent.

5. Economic and technological feasibility: The affected parties will need to pay licensing and registration fees as prescribed by the rule.

6. Minimizing adverse impact: The initial and renewal licensing and registration fees and financial accountability requirements for life settlement providers and life settlement intermediaries prescribed by the rule may present a financial barrier for some small-business life settlement providers and life settlement intermediaries wishing to compete in the New York market. Nonetheless, the Superintendent believes that it is appropriate for the initial and renewal licensing and registration fees charged to life settlement providers and life settlement intermediaries to reflect, if not approximate, the costs and expenses incurred by the Department in implementing this legislation. At the same time, the Superintendent must balance other competing interests: while being reasonable and sufficient to reflect a life settlement provider's or life settlement intermediary's commitment to the New York market and a level of financial resources of such persons that will enable them to create and maintain a compliance structure necessary to ensure the faithful performance of their obligations to owners and insureds on life settlement contracts subject to Insurance Law Article 78, and yet not be too excessive so as to discourage providers and intermediaries with lesser financial resources from seeking licensing or registration.

Renewal fees for both life settlement providers and life settlement intermediaries are considerably less than the initial fees. This reflects that expenses incurred on renewal applications are generally lower than on initial application.

With regard to the licensing and registration fees, alternatives (such as the direct billing of expenses, an assessment based allocation of expenses, or a reduction of licensing and registration fees charged to small-business life settlement providers and life settlement intermediaries) that may have reduced the impact of such fees on small-business life settlement providers and intermediaries were considered. However, such alternatives would require legislative authority, which could not be secured in a timeframe necessary for the timely implementation of the life settlement legislation.

With regard to the financial accountability requirements imposed on life settlement providers, after consideration of the public comment received by the Department from interested parties in response to the posting of a draft of the rule on the Department website and a meeting held with such parties to discuss the rule, the Superintendent did include in the rule an additional compliance method - demonstration of assets in excess of liabilities by an amount no less than \$250,000 - which provides a less costly and less capital restrictive alternative to the other two methods of compliance in the rule.

7. Small business and local government participation: Affected small businesses had the opportunity to comment on the draft of the rule posted on the Department website during the two-week comment period starting March 19, 2010 and to participate (in person or by conference call) in a meeting held at the Department on April 6, 2010 to discuss the rule.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: There may be some life settlement providers, life settlement brokers, and life settlement intermediaries that do business in rural areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule will not impose any reporting or record-keeping requirements on public or private entities in rural areas. The affected parties that do business in rural areas will need to comply with the license and registration fees and financial accountability requirements imposed by the rule.

3. Costs: The rule requires a license fee of \$10,000 for life settlement providers and a registration fee of \$7,500 for life settlement intermediaries. Licensed providers and intermediaries are required to pay a renewal fee every two years, in the amount of \$5,000 and \$2,500, respectively. The rule also sets an annual license fee of \$40 for life settlement brokers. In addition to paying the licensing fee and renewal fees, a life settlement provider must meet financial accountability requirements by demonstrating its assets exceed its liabilities by \$250,000 at the time of initial licensing and at all times thereafter, or by placing either a surety bond or securities in an amount of not less than \$250,000 in trust with the Superintendent.

4. Minimizing adverse impact: The initial and renewal licensing and registration fees and financial accountability requirements for life settlement providers and life settlement intermediaries prescribed by the rule may present a financial barrier for some life settlement providers and life settlement intermediaries doing business in rural areas that wish to compete in the New York market. Nonetheless, the Superintendent believes that it is appropriate for the initial and renewal licensing and registration fees charged to life settlement providers and life settlement intermediaries to reflect, if not approximate, the costs and expenses incurred by the Department in implementing this legislation. At the same time, the Superintendent must balance other competing interests: while being reasonable and sufficient to reflect a life settlement provider's or life settlement intermediary's commitment to the New York market and a level of financial resources of such persons that will enable them to create

and maintain a compliance structure necessary to ensure the faithful performance of their obligations to owners and insureds on life settlement contracts subject to Insurance Law Article 78, and yet not be too excessive so as to discourage providers and intermediaries with lesser financial resources from seeking licensing or registration.

Renewal fees for both life settlement providers and life settlement intermediaries are considerably less than the initial fees. This reflects that expenses incurred on renewal applications are generally lower than on initial application.

With regard to the fees, alternatives (such as the direct billing of expenses, an assessment based allocation of expenses, or a reduction of licensing and registration fees charged to rural area life settlement providers and life settlement intermediaries) that may have reduced the impact of such fees on life settlement providers and intermediaries doing business in rural areas were considered. However, such alternatives would require legislative authority, which could not be secured in a timeframe necessary for the timely implementation of the life settlement legislation.

With regard to the financial accountability requirements imposed on life settlement providers, after consideration of the public comments received from interested parties by the Department in response to the posting of a draft of the rule on the Department website and a meeting held with such parties to discuss the rule, the Superintendent did include in the rule an additional compliance method - demonstration of assets in excess of liabilities by an amount no less than \$250,000 - which provides a less costly and less capital restrictive alternative to the other two methods of compliance included in the rule.

5. Rural area participation: Affected parties doing business in rural areas of the State had the opportunity to comment on the draft of the rule posted on the Department website during the two-week comment period starting March 19th and participate (in person or by teleconference) in the Department meeting on April 6th with interested parties to discuss the rule.

#### **Job Impact Statement**

The Insurance Department finds that this rule should have no impact on jobs and employment opportunities. This rule sets license fees for life settlement providers and life settlement brokers, registration fees for life settlement intermediaries, and financial accountability requirements that life settlement providers must demonstrate at licensing. Additional licensing and registration requirements will be established by related rulemaking in the near future.

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

#### **Regulations Implementing the Comprehensive Motor Vehicle Insurance Reparations Act**

**I.D. No.** INS-04-11-00001-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 Subparts 65-1 (Regulation 68-A) and 65-2 (Regulation 68-B) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 2307, 5103 and 5221

**Subject:** Regulations Implementing the Comprehensive Motor Vehicle Insurance Reparations Act.

**Purpose:** To revise the regulations to comply with chapter 303 of the Laws of 2010.

**Text of proposed rule:** Subdivision (b) of Section 65-1.1 is amended to read as follows:

(b) *An insurer shall provide the appropriate endorsement to be used with a policy.* The Mandatory Personal Injury Protection Endorsement (New York) and the Mandatory Personal Injury Protection Endorsement - Motorcycles (New York) set out below are approved and promulgated for use by an insurer [and, except]. *Except* as provided in subdivision (c) of this section and section 65-1.7 of this Subpart, [must be:

(1) furnished to all new insureds with policies effective on and after September 1, 2001; and

(2) enclosed with the first renewal policies renewed on and after September 1, 2001.] *an insurer shall provide:*

(1) *the Mandatory Personal Injury Protection Endorsement (New York) to every insured with respect to a policy issued, renewed, modified, altered or amended on or after January 26, 2011; or*

(2) *the Mandatory Personal Injury Protection Endorsement - Motorcycles (New York) to every insured with respect to a motorcycle policy issued or renewed.*

The “Exclusions” provision set forth in Subdivision (d) of Section 65-1.1 is amended to read as follows:

#### **Exclusions**

This coverage does not apply to personal injury sustained by:

(g) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate [such] the vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) *except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the Company has a cause of action against such person for the amount of first party benefits that are paid or payable;*<sup>13</sup> or

(h) any person while:

(1) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer;<sup>2</sup>

(2) operating a motor vehicle in a race or speed test;<sup>2</sup>

(3) operating or occupying a motor vehicle known to that person to be stolen;<sup>2</sup> or

(4) repairing, servicing or otherwise maintaining a motor vehicle if [such] the conduct is within the course of a business of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises.<sup>13</sup><sup>2</sup>

Footnote 3 of Section 65-1.1 is amended to read as follows:

<sup>3</sup> [These exclusions] *This exclusion may be deleted, in the event the Company wishes to provide coverage under the indicated [circumstances] circumstance. Alternatively, the Company may delete the cause of action language only, provided, however, that, in either case, if the Company deletes this language, then the Company will be deemed to have waived its right to bring a cause of action against the person.*

The “Exclusions” provision set forth in Subdivision (c) of Section 65-1.3 is amended to read as follows:

#### **Exclusions**

This coverage does not apply to personal injury sustained by:

(g) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate [such] the vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) *except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the Company has a cause of action against such person for the amount of first party benefits that are paid or payable;*<sup>13</sup><sup>14</sup> or

Footnotes 14 through 18 of Sections 65-1.3 and 65-1.4 are renumbered to be Footnotes 15 through 19, respectively. A new Footnote 14 is added to read as follows:

<sup>14</sup> *This exclusion may be deleted, in the event the Company wishes to provide coverage under the indicated circumstance. Alternatively, the Company may delete the cause of action language only, provided, however, that, in either case, if the Company deletes this language, then the Company will be deemed to have waived its right to bring a cause of action against the person.*

The “Exclusions” provision set forth in Subdivision (j) of Section 65-2.3 is amended to read as follows:

#### **Exclusions**

This requirement for payment by a self-insurer of first-party benefits does not apply to personal injury sustained by:

(j) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) *except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the self-insurer has a cause of action against such person for the amount of first party benefits that are paid or payable; or*

**Text of proposed rule and any required statements and analyses may be obtained from:** Andrew Mais, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5585, email: amais@ins.state.ny.us

**Data, views or arguments may be submitted to:** Buffy Cheung, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5587, email: bcheung@ins.state.ny.us

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

**This action was not under consideration at the time this agency's regulatory agenda was submitted.**

#### Consensus Rule Making Determination

Sections 201, 301, 2307, 5103 and 5221 of the Insurance Law authorizes the Superintendent to promulgate regulations governing charges for professional health services under no-fault.

Chapter 303 of the Laws of 2010 amended Insurance Law § 5103(b)(2) to prohibit a no-fault insurer from excluding from coverage necessary emergency health services rendered in a general hospital (as defined in Public Health Law § 2801(10)) including ambulance services attendant thereto and related medical screening, for any person who is injured as a result of operating a motor vehicle while in an intoxicated condition or while the person's ability to operate the vehicle is impaired by the use of a drug within the meaning of Vehicle and Traffic Law § 1192. Chapter 303 also permits a no-fault insurer to maintain a cause of action against the covered person for the amount of first party benefits paid or payable on behalf of the covered person if such person is found to have violated Vehicle and Traffic Law § 1192.

No person is likely to object to the proposed rules as they are revising The Mandatory Personal Injury Protection Endorsement (New York), the Additional Personal Injury Protection Endorsement (New York) and the rights and liabilities of self-insurers in order to comply with Chapter 303 of the Laws of 2010.

#### Job Impact Statement

The proposed rules are required in order to comply with Chapter 303 of the Laws of 2010. The proposed rules should have no adverse impact on jobs or economic opportunities in New York State as the rules merely revise The Mandatory Personal Injury Protection Endorsement (New York), the Additional Personal Injury Protection Endorsement (New York) and the rights and liabilities of self-insurers in order to comply with Chapter 303.

---



---

## Office of Mental Health

---



---

### NOTICE OF ADOPTION

#### Operation of Residential Programs for Adults

**I.D. No.** OMH-45-10-00009-A

**Filing No.** 51

**Filing Date:** 2011-01-10

**Effective Date:** 2011-01-26

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

**Action taken:** Amendment of section 595.9 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09 and 31.04

**Subject:** Operation of Residential Programs for Adults.

**Purpose:** Clarify the due process protections of non-discharge ready residents who are no longer eligible for services.

**Text or summary was published** in the November 10, 2010 issue of the Register, I.D. No. OMH-45-10-00009-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: cocbjdd@omh.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

---



---

## Public Service Commission

---



---

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

#### Initial Tariff Schedule Including the Company's Proposed Rate

**I.D. No.** PSC-04-11-00003-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 whether to approve or reject, in whole or in part, or modify, Westfall Village Water Co., Inc.'s Initial Tariff Schedule P.S.C. No. 1 — Water, to become effective April 1, 2011.

**Statutory authority:** Public Service Law, section 89-e(2)

**Subject:** Initial Tariff Schedule including the company's proposed rate.

**Purpose:** To approve an Initial Tariff Schedule and an initial rate for water service.

**Substance of proposed rule:** On September 21, 2010, Westfall Village Water Co., Inc. (Westfall Village or company) filed an electronic initial tariff schedule, P.S.C. No. 1 - Water, to become effective April 1, 2011, which sets forth the rates, charges, rules and regulations under which the company will operate. Westfall Village currently has no customers but at full development will have 80 customers in the Bon Acre Hamlet Planned Development District in the Town of Sand Lake, Rensselaer County.

Westfall Village proposes a metered rate of \$5.50 per thousand gallons with quarterly billing in arrears. The tariff defines when a bill will be considered delinquent and establishes a late payment charge of 1½ percent per month, compounded monthly, and a returned check charge equal to the bank charge plus a handling fee of \$5. The company is proposing restoration of service charges of \$150 during normal business hours Monday through Friday; \$300 outside of normal business hours Monday through Friday; and \$300 for weekends and public holidays. The company's tariff is available via the internet on the PSC's web site at [www.dps.state.ny.us](http://www.dps.state.ny.us) located under File Room – Tariffs. The Commission may approve or reject, in whole or in part, or modify Westfall Village's rates and charges.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, email: [leann\\_ayer@dps.state.ny.us](mailto:leann_ayer@dps.state.ny.us)

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

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

#### Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-W-0607SP1)

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

#### Termination or Modification of a Plan for Divestiture of Generation Facilities Owned by RG&E and Cayuga

**I.D. No.** PSC-04-11-00004-P

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

**Proposed Action:** The Commission is considering a petition from Rochester Gas and Electric Company (RG&E) and Cayuga Energy, Inc. (Cayuga) requesting that a plan for divestiture of generation facilities they own be terminated or modified.

**Statutory authority:** Public Service Law, sections 2(2-b), (4), (13), 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10) and 70

**Subject:** Termination or modification of a plan for divestiture of generation facilities owned by RG&E and Cayuga.

**Purpose:** Consideration of termination or modification of a plan for divestiture of generation facilities owned by RG&E and Cayuga.

**Substance of proposed rule:** The Commission is considering a petition from Rochester Gas and Electric Company (RG&E) and Cayuga Energy, Inc. (Cayuga) dated December 29, 2010 requesting that a plan providing for the divestiture of generation facilities they own be terminated or modified. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann\_ayer@dps.state.ny.us

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

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

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(07-M-0906SP6)