

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 Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-13-00003-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading “Justice Center for the Protection of People with Special Needs,” by increasing the number of positions of Assistant Counsel from 14 to 21 and Associate Counsel from 4 to 9.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was

previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-13-00004-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading “Gaming Commission,” by adding thereto the position of Chief Veterinarian (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

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Rural Area Flexibility Analysis

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Job Impact Statement

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

Jurisdictional Classification

I.D. No. CVS-43-13-00005-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify a subheading and positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt, in Westchester County under the subheading "Department of Public Works," by deleting therefrom the positions of First Deputy Commissioner of Public Works and Deputy Commissioner (Public Works) and by adding thereto the position of First Deputy Commissioner of Public Works and Transportation and, by adding thereto the subheading "Human Rights Commission," and the position of Executive Director – Human Rights Commission.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Job Impact Statement

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

Jurisdictional Classification

I.D. No. CVS-43-13-00006-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State

University of New York under the subheading "State University Colleges," by increasing the number of positions of øSecretary 2 at SUC at Buffalo from 3 to 4.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

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Rural Area Flexibility Analysis

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Job Impact Statement

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

Jurisdictional Classification

I.D. No. CVS-43-13-00007-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by increasing the number of positions of øDirector Mental Health Field Office 1 from 2 to 3.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was

previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-13-00008-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a subheading and positions from and classify a subheading and positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department, by deleting therefrom the subheading "Office for Technology," and the positions of Assistant Director Information Technology Technical Services 1 (3), øAssociate Counsel (1), øChief Information Security Officer 2 (1), øDirector Information Technology Services 3 (1), øDirector, Office for Technology (1), øManager Information Technology Services 1 Data Base (1), Radio Technician, øSecretary 2 (1) and Technology Enterprise Accounts Manager (1); in the Executive Department under the subheading "Office of General Services," by deleting therefrom the position of øChief Information Security Officer 1 (1); in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by deleting therefrom the position of øChief Information Security Officer 1 (1) and decreasing the number of positions of øDeputy Director DDSO 2 from 40 to 39; in the Department of Mental Hygiene under the subheading "Office of Mental Health," by deleting the position of øChief Information Security Officer 1 (1); in the Department of Family Assistance under the subheading "Office of Children and Family Services," by deleting therefrom the positions of øChief Information Security Officer 1 (1) and Director Services Systems Support (1) (Until first vacated after January 15, 2004); in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by deleting therefrom the positions of øChief Information Security Officer 1 (1), øDirector Systems Design and Development (1) and Information Technology Specialist 1 (Programming) (1) and by decreasing the number of positions of øSecretary 2 from 6 to 5; in the Department of Corrections and Community Supervision, by deleting therefrom the positions of øChief Information Security Officer 1 (2) and øDirector Information Technology Services 3 (1) (Until first vacated after May 6, 1987); in the Department of Health under the subheading "Helen Hayes Hospital," by deleting therefrom the position of øDirector of Rehabilitation Hospital Information Technology (1); in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by deleting therefrom the positions of øChief Information Security Officer 1 (1) and øCyber Security Associate Director (1); in the Department of Financial Services, by deleting therefrom the positions of øDirector Information Technology Services 1 (1) and øManager Information Technology Services 2 (1); in the Executive Department under the subheading "Division of Human Rights," by deleting therefrom the position of øManager Information Technology Services 2 (1); in the Department of Transportation, by decreasing the number of positions of øSecretary 2 from 10 to 9; in the State Department Service under the subheading "All State Departments and Agencies," by deleting therefrom the position of Composer Operator 3; and, in the Executive Department, by adding thereto the subheading "Office of Information Technology Services," and the positions of Assistant Director Information Technology Technical Services 1 (3), øAssociate Counsel (1), øChief Information Security Officer 1 (8), øChief Information Security Officer 2 (1), Cluster Chief Information Officer (9), Critical Infrastructure Analyst 1 (1), øCyber Security Associate Director (1), øDeputy Director DDSO 2 (1), øDirector Information Technology Services 1 (1), øDirector Information Technology Services 3 (1), øDirector Office for Technology (1), øDirector Rehabilitation Information Technology (1), øDirector Systems Design and Development (1), Information Technology Specialist 1 (Programming) (1), øManager Information Technology Services 1 Data Base (1), øManager Information

Technology Services 2 (2), Radio Technician (1), øSecretary 2 (3) and Technology Enterprise Accounts Manager (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-13-00009-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Agriculture and Markets, by deleting therefrom the position of Food Laboratory Scientist (Seed) (1) and by adding thereto the position of Food Laboratory Scientist (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was

previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-13-00010-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health, by deleting therefrom the position of Director, Center for Health Promotion and by increasing the number of positions of Assistant Public Information Officer from 1 to 2.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

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Regulatory Impact Statement

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Regulatory Flexibility Analysis

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Rural Area Flexibility Analysis

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Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-43-13-00011-P

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

Proposed Action: Amendment of Appendices 1 and 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete subheading in exempt and non-competitive classes; classify and delete positions in exempt and non-competitive classes.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified

Service, listing positions in the exempt class, in the Executive Department, by deleting therefrom the subheading "Commission on Quality of Care and Advocacy for Persons with Disabilities," and the positions of Assistant Counsel (4), Assistant to the Advocate, Client Advocate (CQC) (8), Counsel, Deputy Director (4), Executive Secretary, Investigator (2), Secretary (2) and Special Assistant; in the Department of Family Assistance under the subheading "Office of Children and Family Services," by deleting therefrom the position of Director Justice Center Implementation and decreasing the number of positions of Associate Counsel from 4 to 1; and, in the Executive Department under the subheading "Justice Center for the Protection of People with Special Needs," by adding thereto the positions of Assistant to Advocate, Client Advocate (CQC) (8), Director Justice Center Implementation, Executive Secretary, Investigator and Secretary and, by increasing the number of positions of Assistant Counsel from 21 to 23, Associate Counsel from 9 to 12, Counsel from 1 to 2, Deputy Director from 2 to 6 and Special Assistant from 1 to 2; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department, by deleting therefrom the subheading "Commission on Quality of Care and Advocacy for Persons with Disabilities," and the positions of Advocacy for the Disabled Specialist 2, Advocacy for the Disabled Specialist 3, Advocacy for the Disabled Specialist 4, Advocacy for the Disabled Specialist 5, Advocacy Specialist 1, Advocacy Specialist 2, Advocacy Specialist 3, øAdvocacy Specialist 4, øAdvocacy Specialist 5, øPolicy Analysis and Development Specialist 2 (1), øPolicy Analysis and Development Specialist 3 (1), Policy Analyst (Technology Assistance for the Disabled) (1), Quality Care Facility Review Specialist Assistant, Quality Care Facility Review Specialist 1, Quality Care Facility Review Specialist 2, øQuality Care Facility Review Specialist 3, øQuality Care Facility Review Specialist 4, Quality Care Program Cost Analyst 1, Quality Care Program Cost Analyst 2, øQuality Care Program Cost Analyst 3, øQuality Care Program Cost Analyst 4, øSupport Services Assistant (1) and Technical Specialist (Technology Assistance for the Disabled) (2); in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by decreasing the number of positions of Internal Investigator 1 (OPWDD) from 65 to 46; and, in the Executive Department under the subheading "Justice Center for the Protection of People with Special Needs," by adding thereto the positions of Advocacy for the Disabled Specialist 3, Advocacy Specialist 2, Advocacy Specialist 3, øAdvocacy Specialist 4, øAdvocacy Specialist 5, Internal Investigator 1 (OPWDD) (19), øPolicy Analysis and Development Specialist 2 (1), øPolicy Analysis and Development Specialist 3 (1), Policy Analyst (Technology Assistance for the Disabled) (1), Quality Care Facility Review Specialist Assistant, Quality Care Facility Review Specialist 1, Quality Care Facility Review Specialist 2, øQuality Care Facility Review Specialist 3, øQuality Care Facility Review Specialist 4, Quality Care Program Cost Analyst 1, Quality Care Program Cost Analyst 2, øQuality Care Program Cost Analyst 3 and øQuality Care Program Cost Analyst 4.

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Rural Area Flexibility Analysis

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Job Impact Statement

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

Jurisdictional Classification

I.D. No. CVS-43-13-00012-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health, by deleting therefrom the positions of Post-Doctoral Fellow and in the Department of Health under the subheading "Helen Hayes Hospital," by adding thereto the positions of Post-Doctoral Fellow (3).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

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Rural Area Flexibility Analysis

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Job Impact Statement

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Department of Economic Development

EMERGENCY RULE MAKING

Excelsior Jobs Program

I.D. No. EDV-43-13-00002-E

Filing No. 969

Filing Date: 2013-10-07

Effective Date: 2013-10-07

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

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

Statutory authority: L. 2013, ch. 68; L. 2011, ch. 61; L. 2010, ch. 59; Economic Development Law, art. 17

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the Excelsior Jobs Program which was created by Chapter 59 of the Laws of 2010 and amended by Chapter 61 of the Laws of 2011 and Chapter 68 of the Laws of 2013. The Excelsior Jobs Program provides job creation and investment incentives to firms that create and maintain new jobs or make significant financial investment. The Excelsior Jobs Program is one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. The current regulations to administer the Excelsior Jobs Program expire July 10, 2013. It is imperative that the administration of this Program continues so that New York remains competitive with other States, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now. This emergency rule is necessary because, in addition to allowing for the continued administration of the Program, it also changes certain key definitions in order to broaden participation in the Program and ensure accountability. Immediate adoption of this rule will enable the State to begin achieving its economic development goals.

Section 356 of the Economic Development Law expressly authorizes the Commissioner of Economic Development to promulgate regulations on an emergency basis.

Subject: Excelsior Jobs program.

Purpose: Administer the Excelsior Jobs Program.

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

1) The regulation adds the definitions relevant to the Excelsior Jobs Program (the "Program"). Key definitions include, but are not limited to, certificate of eligibility, certificate of tax credit, industry with significant potential for private sector growth and economic development in the State, preliminary schedule of benefits, regionally significant project and significant capital investment. The definition of "net new jobs" has been amended to clarify the fact that the "net new job" minimum eligibility requirement for participation in the Excelsior Tax Credit program means net new job creation above a base level of employment. The definition of "new media" has been amended to include post production film projects and the term "distribution center" now allows processing and repackaging of goods directly to consumers. Also, the definition of "regionally significant project" has been revised to ensure that it mirrors the statutory definition.

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

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

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

5) The regulation sets forth the eligibility criteria for the Program. The strategic industries are specifically delineated in the regulation as follows: (a) financial services data center or a financial services back office operation; (b) manufacturing; (c) software development; (d) scientific research and development; (e) agriculture; (f) back office operations in the state; (g) distribution center; or (h) in an industry with significant potential for private-sector economic growth and development in this state. When determining whether an applicant is operating predominantly in a strategic industry, or as a regionally significant project, the commissioner will ex-

amine the nature of the business activity at the location for the proposed project and will make eligibility determinations based on such activity.

6) The rule is now further amended by to address certain changes to Sections 353 and 354 of the Economic Development Law made by Chapter 68 of the Laws of 2013, which are effective August 23, 2013. In particular, the minimum job requirements for business entities to meet in each of the strategic industries have been reduced, as follows: a business entity operating predominantly in manufacturing must now create at least ten net new jobs; a business entity operating predominately in agriculture must now create at least five net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must now create at least fifty net new jobs; a business entity operating predominantly in scientific research and development must now create at least five net new jobs; a business entity operating predominantly in software development must now create at least five net new jobs; a business entity creating or expanding back office operations must now create at least fifty net new jobs or a business operating predominantly as a distribution center in the state must now create at least seventy-five net new jobs; a business entity must be a Regionally Significant Project. Furthermore, a business entity operating predominantly in one of the industries referenced above but which does not meet the job requirements must have at least twenty-five full-time job equivalents, unless such business is operating predominantly in manufacturing then it must have at least ten full-time job equivalents and must demonstrate that its benefit-cost ratio is at least ten to one (10:1). Finally, in accordance with the recent statutory changes, if, in any given year, a participant who has satisfied the eligibility criteria specified in the statute realizes job creation less than the estimated amount, the credit shall be reduced by the proportion of actual job creation to the estimated amount, provided the proportion is at least seventy-five percent of the jobs estimated.

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

8) The regulation sets forth the evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) whether the Applicant is proposing to substantially renovate contaminated, abandoned or underutilized facilities; or (2) whether the Applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (3) the degree of economic distress in the area where the Applicant will locate the project identified in its application; or (4) the degree of Applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (5) the degree to which the project identified in the Application supports New York State's minority and women business enterprises; or (6) the degree to which the project identified in the Application supports the principles of Smart Growth; or (7) the estimated return on investment that the project identified in the Application will provide to the State; or (8) the overall economic impact that the project identified in the Application will have on a region, including the impact of any direct and indirect jobs that will be created; or (9) the degree to which other state or local incentive programs are available to the Applicant; or (10) the likelihood that the project identified in the Application would be located outside of New York State but for the availability of state or local incentives; or (11) the recommendation of the relevant regional economic development council or the commissioner's determination that the proposed project aligns with the regional strategic priorities of the respective region.

9) The regulation requires an applicant to submit evidence of achieving job and investment requirements stated in its application in order to become a participant in the Program. After such evidence is found sufficient, the Department will issue a certificate of tax credit to a participant. This certificate will specify the exact amount of the tax credit components a participant may claim and the taxable year in which the credit may be claimed. Per the new statute if, in any given year, a participant who has satisfied the eligibility criteria specified in the statute realizes job creation less than the estimated amount, the credit shall be reduced by the proportion of actual job creation to the estimated amount, provided the proportion is at least seventy-five percent of the jobs estimated.

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

11) The regulation next delineates the calculation of the tax credits as described in statute. The Excelsior Jobs Program Credit is the product of gross wages and 6.85 percent. The Excelsior Research and Development Tax Credit is fifty percent of the participant's federal research and development tax credit. The Excelsior Real Property Tax Credit is based on the value of the property after improvements have been made. A participant may claim both the Excelsior Investment Tax Credit and the investment tax credit for research and development property. In addition, the current tax benefit period for all credits is up to ten years.

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

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

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

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

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires January 4, 2014.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 356 of the Economic Development Law authorizes the Commissioner of Economic Development to promulgate regulations to implement the Excelsior Jobs Program.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance in creating competitive financial incentives for businesses to create jobs and invest in the new economy. The Excelsior Jobs Program is created to support the growth of the State's traditional economic pillars, including the manufacturing and financial industries, and to ensure that New York emerges as the leader in the knowledge, technology and innovation based economy. The Program encourages the expansion in and relocation to New York of businesses in growth industries such as clean-tech, broadband, information systems, renewable energy and biotechnology.

NEEDS AND BENEFITS:

The rule is required in order to administer the Excelsior Jobs Program. Section 356 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations with respect to an application process and eligibility criteria.

The current regulations for the Excelsior Jobs Program were last published as an emergency rule making in the July 31, 2013 State Register. This rule making will allow for the continued administration of the Excelsior Jobs Program, which is one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. It is imperative that the administration of this Program continues so that New York remains competitive with other states, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

In addition to allowing for the continued administration of the Program, this rule making also incorporates certain changes to the rule made in the latest emergency rule making, published on July 31, 2013. Those changes modified certain key definitions in order to broaden participation in the Program and ensure accountability. The definition of "net new jobs" has been amended to clarify the fact that the "net new job" minimum eligibility requirement for participation in the Excelsior Tax Credit program means net new job creation above a base level of employment. The definition of "new media" has been amended to include post production film projects and the term "distribution center" now allows processing and repackaging of goods directly to consumers. Finally, the definition of "regionally significant project" has been revised to ensure that it mirrors the statutory definition.

The rule is now further amended by to address certain changes to Sections 353 and 354 of the Economic Development Law made by Chapter 68 of the Laws of 2013, which became effective August 23, 2013. In particular, the minimum job requirements for business entities to meet in each of the strategic industries have been reduced, as follows: a business entity operating predominantly in manufacturing must now create at least ten net new jobs; a business entity operating predominately in agriculture must now create at least five net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must now create at least fifty net new jobs; a business entity operating predominantly in scientific research and development must now create at least five net new jobs; a business entity operating predominantly in software development must now create at least five net new jobs; a business entity creating or expanding back office operations must now create at least fifty net new jobs or a business operating predominantly as a distribution center in the state must now create at least seventy-five net new jobs; a business entity must be a Regionally Significant Project. Furthermore, a business entity operating predominantly in one of the industries referenced above but which does not meet the job requirements must have at least twenty-five full-time job equivalents, unless such business is operating predominantly in manufacturing then it must have at least ten full-time job equivalents and must demonstrate that its benefit-cost ratio is at least ten to one (10:1). Finally, in accordance with the recent statutory changes, if, in any given year, a participant who has satisfied the eligibility criteria specified in the statute realizes job creation less than the estimated amount, the credit shall be reduced by the proportion of actual job creation to the estimated amount, provided the proportion is at least seventy-five percent of the jobs estimated.

It should be noted that the rule, including the most recent changes prompted by changes in the law made by Chapter 68 of the Laws of 2013, was published for permanent adoption in a notice of proposed rulemaking in the August 28, 2013 State Register.

COSTS:

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

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

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

LOCAL GOVERNMENT MANDATES:

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

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions. The Department conducted outreach with respect to this rulemaking. Specifically, it contacted the Citizens Budget Commission, Partnership for New York City, the Buffalo Niagara Partnership and the New York State Economic Development Council and received comments from them. The Department carefully considered all comments made with respect to the regulation. Certain comments were incorporated into the rulemaking while others deemed inappropriate were not.

FEDERAL STANDARDS:

There are no federal standards in regard to the Excelsior Jobs Program. Therefore, the 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 rule imposes record-keeping requirements on all businesses (small, medium and large) that choose to participate in the Excelsior Jobs Program. The rule requires all businesses that participate in the Program to establish and maintain complete and accurate books relating to their participation in the Program for the duration of their term in the Program plus three additional years. Local governments are unaffected by this rule.

2. Compliance requirements

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

3. Professional services

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

4. Compliance costs

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

5. Economic and technological feasibility

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

6. Minimizing adverse impact

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

7. Small business and local government participation

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

Rural Area Flexibility Analysis

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

Job Impact Statement

The rule relates to the Excelsior Jobs Program. The Excelsior Jobs Program will enable New York State to provide financial incentives to businesses in strategic industries that commit to create new jobs and/or to make significant capital investment. This Program, given its design and purpose, will have a substantial positive impact on job creation and employment opportunities. The rule will immediately enable the Department to fulfill its mission of job creation and investment throughout the State and in economically distressed areas through implementation of this new economic development program. Because this rule will authorize the Department to immediately begin offering financial incentives to strategic industries that commit to creating new jobs and/or to making significant

capital investment in the State during these difficult economic times, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Prohibited and Regulated Invasive Species

I.D. No. ENV-43-13-00013-P

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

Proposed Action: Addition of Part 575 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, art. 9, title 17; sections 1-0101, 3-0301, 9-0105, 9-1303, 9-1701, 9-1705, 9-1707, 9-1709, 11-0507, 11-0509, 11-0511, 71-0703; and Agriculture and Markets Law, section 167(3-a), arts. 9, 11 and 14

Subject: Prohibited and Regulated Invasive Species.

Purpose: To control invasive species by reducing the introduction of new and the spread of existing populations in the State.

Public hearing(s) will be held at: 2:00 p.m., December 10, 2013 at Department of Environmental Conservation, Region 9 Headquarters, 1st Fl. Conference Rm., 270 Michigan Ave., Buffalo, NY; 2:00 p.m., December 11, 2013 at State Fairgrounds, Martha Eddy Rm., 581 State Fair Blvd., Syracuse, NY; 3:00 p.m., December 16, 2013 at Department of Environmental Conservation, Central Office, Public Assembly Rm. (Fl. 1), 625 Broadway, Albany, NY; 2:00 p.m., December 17, 2013 at State University of NY at Stony Brook, Department of Environmental Conservation, Region 1 Headquarters, Basement Conference Rm., 50 Circle Rd., Stony Brook, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule (Full text is posted at the following State website: www.dec.ny.gov): A new Part 575 will be adopted under 6 NYCRR Chapter V, Subchapter C. Existing Subchapter C, Real Property and Land Acquisition, will become Subchapter D, and existing Subchapter D, Water Regulation, will be placed in a new Subchapter E. This document provides a summary of the proposed invasive species regulations. The Express Terms of proposed Part 575 control should a conflict exist between this summary document and the Express Terms.

Section 575.1: Purpose, scope and applicability

The purpose of the proposed invasive species regulations is to provide rules and procedures to identify, classify and establish a permit system in an effort to restrict the sale, purchase, possession, propagation, introduction, importation, and transport of invasive species in New York, as part of the New York State Department of Environmental Conservation's ("DEC") statewide invasive species management program, as required by Environmental Conservation Law (ECL) sections 9-1709 and 71-0703. The regulations set forth in this Part may be complemented by existing regulations promulgated by the DEC and the New York State Department of Agriculture and Markets ("DAM") and local laws or regulations designed to restrict the sale, purchase, possession, propagation, introduction, importation, transport and disposal of specific invasive species in New York. These existing regulations continue to apply, unless in conflict, superseded or expressly stated otherwise in this Part.

Section 575.2: Definitions

As used in this Part, the following words and terms have the meanings ascribed in the proposed rule under section 575.2: Animal, Certificate of Inspection, Commissioner, Compliance Agreement, Container, Control, Cultivar, Department, Disposal, Ecosystem, Education, Environmental Notice Bulletin, Free-living State, Fungi, Import, Incidental, Introduce, Invasive Species, Limited Permit, Native Species, Natural Areas, Nonnative Species, Person, Plant, Possess, Prohibited Invasive Species, Propagate, Propagule, Public Lands, Public Waters, Purchase, Reasonable

Precautions, Regulated Invasive Species, Research, Sell, Species, and Transport. "Invasive Species" means a species that is nonnative to the ecosystem under consideration, and whose introduction causes or is likely to cause economic or environmental harm or harm to human health. For the purposes of this Part, the harm must significantly outweigh any benefits. The remainder of the definitions are not included in this summary.

Section 575.3: Prohibited invasive species

Prohibited invasive species are identified in section 575.3 by scientific and common names and by specific categories of species including: algae and cyanobacteria, plants, fish, terrestrial and aquatic invertebrates, and terrestrial and aquatic vertebrates, and fungi. Species are not listed in this summary. Except as otherwise provided by this Part, no person shall knowingly possess with the intent to sell, import, purchase, transport, or introduce any prohibited invasive Species. Except as otherwise provided by this Part, no person shall sell, import, purchase, transport, introduce or propagate any prohibited invasive species. Prohibited invasive species shall only be disposed of in a manner that renders them nonliving and nonviable. A person may possess, sell, purchase, transport or introduce for a maximum of one year following the effective date of this Part, Japanese Barberry, a prohibited invasive species. Furthermore, a person may possess, sell, offer for sale, distribute, transport, or otherwise market or trade live Eurasian boars until September 1, 2015; however, no person shall knowingly import, propagate or introduce Eurasian boars into a free-living state. "Free-living state" is defined as unconfined and outside the control of a person, and provides that species released to public lands and waters, as well as natural areas, are considered to be in a "free-living state."

Section 575.4: Regulated invasive species

Regulated invasive species are identified in section 575.4 by scientific and common names and by specific categories of species including: algae and cyanobacteria, plants, fish, aquatic invertebrates, and terrestrial and aquatic vertebrates. Species are not listed in this summary. Except as otherwise provided by in this Part, no person shall knowingly introduce into a free-living state or introduce by a means that one knew or should have known would lead to the introduction into a free-living state any regulated invasive species, although such species shall be legal to possess, sell, buy, propagate and transport.

Section 575.5: Classifications

Section 575.5 provides that in classifying a nonnative species as either a Prohibited or Regulated species, DEC and DAM apply the invasiveness ranking system established in 'A Regulatory System for Non-Native Species, June 2010, and consider one or more of the following ecological and socio-economic factors to determine the invasiveness rank of a species and whether it should be listed as prohibited or regulated: (1) whether a species meets the definition of an invasive species; (2) whether the species is currently on a federal list or listed in other states as an invasive species and its native habitat has climatic conditions similar to that of New York State; (3) ecological impacts; (4) biological characteristics and dispersal ability; (5) ecological amplitude and distribution; (6) difficulty of control; (7) economic benefits or negative impacts of the species; (8) human health benefits or negative impacts of the species; and (9) cultural or societal significance of the benefits or harm caused by the species. "Invasiveness Rank" means a rank assigned to a nonnative species, applying the criteria described above, to signify its level of invasiveness (Very High, High, Medium, Low or Insignificant). Species ranking "Moderate" or higher invasiveness in the ecological assessment are classified as "Regulated" or "Prohibited" based on the outcomes of the assessments, including a socio-economic assessment. Species that have been determined to be "High" or "Very High" invasiveness, posing a clear risk to New York's ecological well-being, and for which the subsequent socio-economic assessments have determined that social or economic benefits are not significantly positive, are classified as "Prohibited." Species that have been determined to have "Moderate" invasiveness and the socio-economic assessments have determined there is no significantly negative or positive socio-economic harm or benefit are classified as "Regulated." Those species that have ranked "High" or "Very High" invasiveness in the ecological assessment, and pose a clear risk to New York's ecological well-being, but have significantly positive socio-economic benefit may be classified as "Regulated." In other instances, species ranking "Moderate," but have significantly negative socio-economic value, may be classified as "Prohibited." Grace periods may be established for species classified as Prohibited by DEC and DAM to allow businesses to plan for the management of existing stock. All future classifications of prohibited and regulated invasive species shall apply the invasiveness ranking system established in the Report and required by this section.

Section 575.6: Conditions governing regulated invasive species

Pursuant to section 575.6, a regulated invasive species that is sold or offered for sale shall have attached, a label with the words "Invasive Species-Harmful to the Environment" in at least 14 point bold font and will offer alternative non-invasive species information and provide instruc-

tions to prevent the spread of invasive species. Where it is impracticable to display a label, written notice shall be provided upon sale to the purchaser. Before supplying or planting a regulated invasive species as part of a landscape service, a person shall give written notice to the customer that the invasive species is harmful to the environment, including the common and scientific names of the invasive species immediately followed by the words "Invasive Species-Harmful to the Environment" in 14 point bold type or greater. The notice shall offer alternative non-invasive species and shall provide instructions to prevent the spread of invasive species. No person selling or offering for sale a regulated species shall conceal, detach, alter, deface, or destroy any label, sign, or notice required under this subpart. Any person who purchases a Regulated invasive species shall be required to follow any instructions required by this subpart and maintain the required instructions until the Regulated species is disposed of in a manner that renders it nonliving and nonviable.

Section 575.7: Petitions to add a species to the invasive species list or remove a species from the invasive species list

Under section 575.7, a person may petition DEC to have a species added to or removed from the invasive species list. DEC may only classify additional nonnative species that meet the established criteria in section 575.5 for prohibited or regulated invasive species and may only remove previously classified invasive species if those invasive species no longer meet the established criteria in section 575.5. Under both circumstances, DEC must get concurrence from DAM.

Section 575.8: Exemptions

Section 575.8 provides exemptions from compliance with Part 575 for certain activities related to regulated and prohibited species, such as: if the DEC determines such activities or introduction were incidental or unknown and not due to a person's failure to take reasonable precautions; transportation for disposal or identification; the control or management of invasive species; cultivars that meet certain criteria; persons authorized by permit or compliance agreements from DEC, DAM, or US Department of Agriculture; and wetland plant species associated with a vegetation treatment unit used in a wastewater treatment facility authorized by a DEC permit prior to the adoption of this Part. "Reasonable Precautions" is defined in this Part as "intentional actions that prevent or minimize the possession, transport, or introduction of invasive species."

Section 575.9: Invasive species permits

Under section 575.9, a person may possess, with intent to sell, import, purchase, transport or introduce a prohibited or regulated invasive species if the person has been issued a permit by DEC for research, education, or other approved activity. This section describes permit conditions and requirements for issuance of invasive species permits including: written application requirements, approval criteria, issuance and conditions, records and reporting, permits transfer/ alterations, violations and other permits or approvals. The permit would require that the applicant demonstrate to DEC's satisfaction that adequate safeguards are in place to control and dispose of the invasive species to prevent the potential spread of invasive species in New York State. Specific language has not been included in this summary document.

Section 575.10: Penalties and enforcement

Section 575.10 provides that any person who violates this Part or any license or permit or order issued by the DEC pursuant to section 9-1709 of the ECL or pursuant to the provisions of this Part shall be liable for all penalties and other remedies provided for in the Environmental Conservation Law, including section 71-0703. Such penalties and remedies may be in addition to any other penalty available under other laws, including, but not limited to, permit revocation.

575.11: Coordination

Section 575.12 clarifies that Part 575 does not affect the existing authority of DAM and that DAM will be responsible for the inspection of registered growers and dealers of plant material for compliance with this Part. Furthermore, any violation issued by DAM shall be referred to the DEC for assessment of penalties pursuant to Environmental Conservation Law section 71-0703.

Section 575.12: Severability

If a provision of this Part or its application to any person or circumstance is determined to be contrary to law by a court of competent jurisdiction, pursuant to section 575.13, such determination shall not affect or impair the validity of the other provisions of this Part or the application to other persons and circumstances.

Text of proposed rule and any required statements and analyses may be obtained from: Leslie Surprenant, Division of Lands and Forests, 625 Broadway, Albany, NY 12233, (518) 402-8980, email: ljsurpre@gw.dec.state.ny.us

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

Public comment will be received until: Five days after the last scheduled public hearing.

Additional matter required by statute: A Negative Declaration has been

prepared in compliance with Article 8 of the Environmental Conservation Law.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Summary of Regulatory Impact Statement

1. Statutory authority: The proposed regulations establish requirements for the sale, importation, purchase, transportation or introduction of invasive species. These draft regulations are jointly proposed by the New York State Department of Environmental Conservation (DEC) and the Department of Agriculture and Markets (DAM). Statutory authority to promulgate Part 575 of Title 6 of the Codes, Rules and Regulations of the State of New York (6 NYCRR) is explicitly found in Environmental Conservation Law (ECL) § 9-1709 and Agriculture and Markets Law (AML) § 167 (3-a). ECL § 9-1709, mandates the strengthening of controls regarding the prevention, spread, and control of invasive species. ECL § 71-0703(9)(a-b), establishes penalties for violations of the regulations.

Moreover, ECL § 11-0507(4) makes it unlawful to liberate, buy or sell, or offer to buy or sell zebra mussels without a DEC issued permit. Similarly, ECL § 11-0509 prohibits the planting, transportation, sale, or any action that could cause the spread or growth of water chestnut. Other statutory authority includes: ECL Sections 1-101, 3-303, 9-0105, 9-1303, 11-0511 and AML Articles 9, 11 and 14.

2. Legislative objectives: In order to help reduce the devastating environmental and economic impacts of invasive species, ECL § 9-1709, provides the DEC and DAM with explicit authority to regulate the sale, purchase, possession, introduction, importation and transport of invasive species and establishes penalties for those who violate such regulations. The proposed 6 NYCRR Part 575 regulation achieves the legislative goal of reducing the adverse environmental and economic impacts of invasive species by identifying invasive species and prohibiting or regulating the importation, sale, purchase, propagation, transportation, or introduction of invasive species that pose a clear risk, or the potential to cause harm, to New York's economy, ecological well being or human health. The proposed regulations used the ecological and socio-economic assessment processes presented in the 2010 report titled "A Regulatory System for Non-native Species," to assign regulatory classifications to assessed species.

Assessments consist of an ecological risk and a socio-economic cost/benefit analysis. The ecological assessment considers ecological impacts on ecosystems processes, ecological communities, and on other species. Among the considerations are: ease of dispersal, reproductive potential, distribution, similarity of species' native climate to New York's climate, and difficulty of controlling the species. The socio-economic assessments are conducted to determine the species economic, human health and cultural impacts and importance.

Based on these assessments, ECL § 9-1709 requires the DEC to jointly promulgate regulations with the DAM, that: (1) list prohibited invasive species, which are unlawful to knowingly possess with the intent to sell, import, purchase, transport, or introduce, and unlawful to import, sell, purchase, propagate, transport, or introduce; (2) provide for permits that would authorize the possession of invasive species for research and education that would otherwise be prohibited; and (3) list regulated species, which shall be legal to possess, sell, buy, propagate and transport but may not be introduced into a free-living state.

ECL § 71-0703(9) established penalties for violations of the regulations: starting with a written warning for a first violation, and a fine of no less than \$250 for subsequent violations. A licensed nursery grower, any owner or operator of a public vessel, or any person who owns or operates a commercial fishing vessel who violates the regulations by transporting, selling, importing, or introducing invasive species will be subject to a fine of not less than \$600 dollars for a first violation and not less than \$2,000 for a second violation. For subsequent violations, a nursery grower may be subject to license revocation; an owner or operator of a public vessel may have their vessel registration suspended; and a commercial fishing vessel owner or operator may have their fishing permit revoked.

The proposed regulations achieve the legislative goal of preventing the spread of invasive species and complement DEC's and DAM's existing regulations, as well as local laws that also seek to restrict the spread of certain invasive species. 6 NYCRR Part 575 identifies the criteria DEC and DAM applied for classifying invasive species as either prohibited or regulated (this same criteria is required to be applied for future classification as well); lists both prohibited and regulated invasive species; provides a means for the public to petition DEC to classify or remove a species from the lists of regulated or prohibited species; establishes grace periods for certain prohibited species so businesses can manage existing stock; and, provides exemptions for certain activities involving prohibited and regulated species.

All of the species classified as prohibited pose a clear risk to New York's economy, ecological well being and/or human health. As such, the

proposed regulation prohibits the possession with the intent to sell, import, purchase, transport, or introduce, as well as the importation, sale, purchase, propagation, transportation, or introduction of any species listed as prohibited, unless otherwise provided for elsewhere in the proposed regulation, namely by permit. Conversely, while regulated invasive species have the potential to cause significant harm to New York's economy, ecological well being or human health, these species can be effectively contained through practicable and meaningful regulatory programs. Regulated invasive species can be sold, purchased, propagated, and transported, but not knowingly introduced into a free-living state or introduced by means that one knew or should have known would lead to introduction into a "free-living state." The proposed regulations establish conditions that sellers and purchasers must adhere to that would prevent or minimize the risk of the spread of regulated invasive species and, consequently, would serve to limit any potential significant harm to New York's economy, ecological well being or human health that could be caused by those invasive species.

As indicated above, the regulations provide for exemptions for certain activities and a permit process for other activities. These provisions should provide necessary flexibility to the regulated community and reduce costs, while still providing the necessary protections to prevent the spread and introduction of invasive species. The following activities would not be subject to the proposed regulatory requirements: if the DEC determines such activities or introduction were unknown or not due to failure to take reasonable precautions; transportation for disposal or identification; the control or management of invasive species; cultivars that meet certain criteria; or persons authorized by permit or compliance agreements from DEC, DAM, or US Department of Agriculture. The proposed regulations also provides for the issuance of a permit for research, education, or other approved activities concerning prohibited invasive species. The permit would require that the applicant demonstrate that adequate safeguards are in place to control and dispose of the invasive species to prevent their potential spread in New York State.

3. Needs and benefits: Invasive species are defined in ECL § 9-1703 as species that are "non-native to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health" which "must significantly outweigh any benefits." Invasive species are almost entirely spread by human activities and are increasing with growing global trade and travel. Invasive species harm all sectors of our economy through direct impacts, including reducing the quality and quantity of forest and agricultural products, damaging infrastructure such as water intakes for municipal water supplies and power generation and reducing recreational opportunities. Negative impacts to our environment include competition with native species, impeding ecosystem functions, and contributing to the decline of threatened and endangered species.

Invasive species are introduced and transported through "pathways". Pathways may be natural and uncontrollable such as wind, currents, and extreme weather events. Other invasive species pathways are human made resulting from intentional introductions of non-native species from activities like gardening and landscape planting, hunting preserve management, and religious/cultural releases of live animals. Unintentional introductions by humans are associated with certain activities such as recreational boating, construction, and transportation.

Implementation of the proposed rulemaking is expected to impede the introduction and spread of invasive species, primarily through regulating trade in live organisms, resulting in a positive impact on the environment.

Outreach related to this proposed rulemaking included at least two meetings with the Invasive Species Council, a nine state-agency body, and two meetings with the Invasive Species Advisory Committee, an advisory body, whose membership consists of 25 diverse non-governmental stakeholders, including the landscape, nursery and forest industries, Farm Bureau, conservation organizations, lake associations, local government, and academia.

4. Costs: Regulated parties selling live non-native organisms will incur short-term costs for eliminating their stocks of prohibited species and complying with requirements for regulated species. Costs to the nursery and landscape industry may result from lost sales of some popular species that will be listed as prohibited or regulated. Additionally, the pet industry may see losses as a result of the listing of certain animal and fish species. Costs to industry may be offset for the nursery industry by continuing to allow the sale of certain regulated species with conditions attached. Minor costs for obtaining permits for certain activities may be incurred by some regulated parties. Grace periods for select prohibited species will reduce the negative impact to the regulated entities.

DEC and DAM will incur costs for staff time for all rulemaking activities. Consultant contracts for species assessments are needed to determine appropriate classifications. Costs will continue into the future for reviewing and updating prohibited and regulated species lists, reviewing and issuing new permits, and for enforcement. Local governments should not incur costs.

5. Local government mandates: None. Local governments currently using species that are listed as prohibited or regulated would however need to avoid using prohibited species and comply with requirements for regulated species.

6. Paperwork: A person applying for a permit pursuant to the proposed regulation would need to submit an application to the DEC and provide all the necessary information. In addition, the proposed rule requires labeling or written notices for regulated invasive species that are sold or offered for sale to prevent its spread or introduction into a free-living state.

7. Duplication: The proposed regulations do not expressly duplicate any State requirement, except several invasive species and related topics are addressed in law or regulations elsewhere. Some overlap may exist at the local level because executive orders, resolutions and local laws for invasive species have been enacted and minor inconsistencies may exist, although the jurisdictional applications of the laws and regulations minimize conflicts. Some permit duplication of Federal requirements may exist where there is overlap with species listed by the United States Fish and Wildlife Service as injurious in the Lacey Act or the United States Department of Agriculture's Plant Pest Program.

8. Alternatives: Adoption of Part 575 is necessary to meet the express legislative directive to "promulgate regulations to implement the provisions of this act", ECL § 9-1709(4). If DEC and DAM take no action, the Departments could be considered in violation of the law. Therefore, there are no significant alternatives.

9. Federal standards: New York's definition of an invasive species was adopted from the Federal Executive Order 13112. The proposed regulations also classify as prohibited or regulated a number of non-native species that are not federally-regulated. These regulations would not supersede or replace federal standards for permit issuance.

10. Compliance schedule: The regulated community is required to comply with the proposed regulations six months after notice of adoption in the State Register. Consistent with NYS State Administrative Procedures Act (SAPA) § 202-b, a cure period is provided through ECL § 71-0703 that allows for a written warning for first offenses. With respect to any nursery grower or an operator of a commercial fishing vessel no cure period has been provided because ECL § 71-0703(b) statutorily mandates specific penalties for first offenses.

Regulatory Flexibility Analysis

1. Effect of rule: The proposed rule takes prohibited invasive species out of commerce and allows certain regulated species to be sold under conditions.

2. Compliance requirements: The proposed rule requires labeling or written notices for regulated invasive species that are sold or offered for sale; and further requires that any person who purchases a regulated species maintain required instructions for care or tending of the invasive species to prevent its spread or introduction into a free-living state. The proposed rule allows a person to possess, with intent to sell, import, purchase, transport or introduce prohibited invasive species; and the introduction of regulated invasive species into a free-living state if a permit has been issued by the New York State Department of Environmental Conservation (DEC). A written application for such permits is required; and permittees must keep a current record of all permit activities as required by DEC on forms available from DEC.

3. Professional services: There are no professional services that a small business or local government is likely to need to comply with the changes associated with this rule. The proposed rule provides that the New York State Department of Agriculture and Markets (DAM) prescribes the design of the required labels or notices for regulated species.

4. Compliance costs: There are limited initial capital costs or annual costs to comply with the rule. Persons who sell or offer for sale regulated species will incur minimal costs for required labels or written notices. Persons who seek permits for prohibited or regulated species will not be charged a fee for each permit.

5. Economic and technological feasibility: The proposed rule does not require any specialized technology for compliance; and is otherwise both economically and technologically feasible to comply with.

6. Minimizing adverse impact: Costs to industry may be offset for the nursery industry by continuing to allow the sale of certain regulated species with conditions attached. Furthermore, the proposed regulations reduce costs by providing for grace periods for certain identified prohibited invasive species. The regulation specifically provides for a grace period until September 1, 2015 to possess, sell, trade and market Eurasian boars, which will allow current operators of Eurasian boar shooting preserves to recover their initial investments. Similarly, the regulation provides for a one year grace period for the possession, sale, purchase, transportation or introduction of Japanese Barbary following the effective date of this Part. This provision provides the regulated community time to sell existing stocks, and the ability to transition to alternatives. In this regard, costs may also be offset by offering alternatives to invasive species.

The proposed regulations do not impose any direct programs, services,

duties or responsibilities upon any county, city, town, village, school district or other special district. Local governments currently using species that will be listed as prohibited or regulated will need to avoid using prohibited species and comply with requirements for regulated species. However, the proposed regulation would provide local governments the ability to continue to use regulated invasive species for landscaping on public lands under a DEC issued permit. A permit would only be issued if DEC determined that the issuance of the permit would not lead to the spread of the regulated invasive species.

7. Small business and local government participation: DEC has complied with the New York State Administrative Procedure Act (SAPA) section 202-b (6) by assuring that small businesses and local governments have been given an opportunity to participate in the rule making. This participation has occurred through meetings and interaction with both the Invasive Species Council (Council), a nine state-agency body established by Environmental Conservation Law (ECL) section 9-1705 and co-led by DEC and DAM, and the Invasive Species Advisory Committee (ISAC), a body of 25 non-governmental entities established by ECL section 9-1707.

The Council is composed of representatives from the following agencies: DEC, DAM, Department of Transportation, Office of Parks, Recreation, and Historic Preservation, Department of Education, Department of State, New York State Thruway Authority, New York State Canal Corporation, and the Adirondack Park Agency.

The ISAC is composed of representatives from the following organizations: American Society of Landscape Architects - New York Upstate Chapter, Associated General Contractors of America - New York Chapter, Audubon, New York, Biodiversity Research Institute, Cornell University, Darrin Freshwater Institute, RPI Empire State Forest Products Association, Empire State Marine Trades Association, Environmental Energy Alliance of New York, Lake Champlain Basin Program, New York Association of Conservation Districts, New York City Department of Environmental Protection New York Farm Bureau, New York Natural Heritage Program, New York Sea Grant New York State Association of Counties, New York State Federation of Lakes Associations, New York State Flower Industries, Inc., New York State Forest Owners Association, New York State Nursery and Landscape Association, New York State Turfgrass Association / Council of Agricultural Organizations, Partnerships for Regional Invasive Species Management, State University of New York College of Environmental Science and Forestry, The Nature Conservancy, and the Wildlife Society - New York Chapter.

DEC met with ISAC on March 23, June 11, and July 19, 2013. DEC met with the Council on May 13 and July 19, 2013. DEC also met separately with the New York Farm Bureau on September 3, 2012 and with The Nature Conservancy on June 26, 2013.

DAM met with representatives of the Nature Conservancy (TNC), New York State Nursery and Landscape Association (NYSNLA) and New York Farm Bureau (NYFB) in October and November of 2012, to assist in the development of socio-economic assessments for the plant species that ranked "Very High" for ecological invasiveness. In similar fashion, DAM reached out again in July of 2013, to TNC, NYSNLA and NYFB as well as the entire Invasive Species Advisory Committee to assist in completing the socio-economic assessments for the plant species that ranked "High" for ecological invasiveness.

Furthermore, the DEC will be accepting public comments to the Notice of Proposed Rulemaking and will be providing responses to any comments that are received. A public hearing will also be held. The regulations will be available for review on the DEC's website.

8. Cure period: Consistent with SAPA section 202-b, the proposed regulations provided for a cure period through ECL section 71-0703 enforcement provisions. In this regard, ECL section 71-0703 provides that "any person who transports, sells, imports or introduces invasive species, in violation of the regulations promulgated pursuant to [ECL] section 9-1709" may be "issued a written warning" in lieu of a penalty. With respect to any nursery grower or an operator of a commercial fishing vessel no cure period has been provided because ECL section 71-0703(b) statutorily mandates specific penalties for first offenses. However, as indicated above, the proposed regulations provide for a grace period until September 1, 2015 for the possession, sale, transportation, distribution and marketing of Eurasian boars and a one year grace period for Japanese Barberry.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This rule applies to the entire State and impacts all rural areas of the State.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The proposed rule requires labeling or written notices for regulated invasive species that are sold or offered for sale; and further requires that any person who purchases a regulated species maintain required instructions for care or tending of the invasive species to prevent its spread or introduction into a free-living state. Since the proposed rule provides that the New York State Department of Agriculture

and Markets (DAM) prescribes the design of the labels or notices, there is not anticipated to be any professional assistance required to comply with these requirements.

The proposed rule allows a person to possess, with intent to sell, import, purchase, transport or introduce prohibited invasive species; and the introduction of regulated invasive species into a free-living state if a permit has been issued by the New York State Department of Environmental Conservation (DEC). A written application for such permits is required; and permittees must keep a current record of all permit activities as required by DEC on forms available from the DEC. No professional assistance is required to prepare and submit the applications or to maintain the required records.

3. Costs: There are limited initial capital costs or annual costs to comply with the rule. Persons who sell or offer for sale regulated species will incur minimal costs for required labels or written notices. Persons who seek permits for prohibited or regulated species will be not be charged a fee for each permit.

4. Minimizing adverse impact: Costs to industry may be offset for the nursery industry by continuing to allow the sale of certain regulated species with conditions attached. Furthermore, the proposed regulations reduce costs by providing for grace periods for certain identified prohibited invasive species. The regulation specifically provides for a grace period until September 1, 2015 to possess, sell, trade and market Eurasian boars, which will allow current operators of Eurasian boar shooting preserves to recover their initial investments. This provision provides the regulated the community time to sell existing stocks, and the ability to transition to alternatives. Similarly, the regulation also provides for a one year grace period for the possession, sale, purchase, transportation or introduction of the Japanese Barberry following the effective date of this Part. In this regard, costs may also be offset by offering alternatives to invasive species.

The proposed regulations do not impose any direct programs, services, duties or responsibilities upon any county, city, town, village, school district or other special district. Local governments currently using species that are listed as prohibited or regulated will need to avoid using prohibited species and comply with requirements for regulated species. However, the proposed regulation would provide local governments the ability to continue to use regulated invasive species for landscaping on public lands under a DEC issued permit. A permit would only be issued if DEC determined that the issuance of the permit would not lead to the spread of the regulated invasive species.

5. Rural area participation: DEC has complied with the New York State Administrative Procedure Act (SAPA) section 202-bb (7) by assuring that public and private interests in rural areas have been given an opportunity to participate in the rule making process. This participation has occurred through meeting and interaction with both the Invasive Species Council (Council), a nine state-agency body established by Environmental Conservation Law (ECL) section 9-1705 and co-led by DEC and DAM, and the Invasive Species Advisory Committee (ISAC), a body of 25 non-governmental entities established by ECL section 9-1707.

The Council is composed of individuals from the following organizations: DEC, DAM, Department of Transportation, Office of Parks, Recreation, and Historic Preservation, Department of Education, Department of State, New York State Thruway Authority, New York State Canal Corporation, and the Adirondack Park Agency.

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DAM met with representatives of the Nature Conservancy (TNC), New York State Nursery and Landscape Association (NYSNLA) and New York Farm Bureau (NYFB) in October and November of 2012, to assist in the development of socio-economic assessments for the plant species that ranked "Very High" for ecological invasiveness. In similar fashion, DAM

reached out again in July of 2013, to TNC, NYSNLA and NYFB as well as the entire Invasive Species Advisory Committee to assist in completing the socio-economic assessments for the plant species that ranked "High" for ecological invasiveness.

Furthermore, DEC will be accepting public comments to the Notice of Proposed Rulemaking and will be providing responses to any comments that are received. Public hearings will also be held.

Job Impact Statement

1. Nature of impact: At the outset, compliance with the proposed rule will result in a reduction in the sale of certain listed invasive species. In fact, that is the intention of the proposed regulations. With the reduced sales there may be a reduction in income for businesses selling invasive species, and this may negatively impact jobs at such businesses. However, it is anticipated that by providing grace periods for the management of existing stock of prohibited species, and allowing the sale of certain regulated species subject to conditions, negative impacts to income will be minimized and impacts on jobs will likewise be minimal. It is also anticipated that the sales of alternative, non-invasive, species will increase, which will also act to counter any negative impacts to jobs.

2. Categories and numbers affected: There are approximately 9,000 licensed nursery growers/dealers in New York State that could, depending on the species they sell, be impacted by the proposed rule. Additionally, there are an unknown number of unlicensed pet dealers that may be impacted by the proposed rule if they sell prohibited or regulated invasive species. Unlicensed pet dealers are those that deal in pets other than cats or dogs.

3. Regions of adverse impact: There are no regions in the State where this rule making will have a disproportionate adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact: Costs to industry may be offset for the nursery industry by continuing to allow the sale of certain regulated species with conditions attached. Furthermore, the proposed regulations reduce costs by providing for grace periods for certain identified prohibited invasive species. As described above, the regulation specifically provides for a grace period until September 1, 2015 to possess, sell, trade and market Eurasian boars, which will allow current operators of Eurasian boar shooting preserves to recover their initial investments. Similarly, the regulation provides for a one year grace period for the possession, sale, purchase, transportation or introduction of the Japanese Barberry following the effective date of this Part. This provision provides the regulated community time to sell existing stocks, and the ability to transition to alternatives. In this regard, costs may also be offset by offering alternatives to invasive species. Moreover, new businesses promoting commerce in non-invasive and native species may start up.

Department of Financial Services

EMERGENCY RULE MAKING

Credit Exposure Arising from Derivative Transactions

I.D. No. DFS-43-13-00001-E

Filing No. 967

Filing Date: 2013-10-02

Effective Date: 2013-10-06

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

Action taken: Addition of Part 117 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 103 and 235; and Financial Services Law, section 302

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

Specific reasons underlying the finding of necessity: Derivative transactions, including swaps and options, are a basic tool used by many banking organizations in New York and elsewhere to hedge their exposure to various types of risk, including interest rate, currency and credit risk.

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act [cite] ("DFA") became effective [date]. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an insured state bank (including an insured state savings bank) may only engage in derivative transactions if the law of its chartering state regarding lending limits "takes into consideration credit exposure to derivative transactions."

In light of federal enactment of the DFA, the Legislature amended the Banking Law provision regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from derivative transactions should be taken into account. Laws of 2011, c. 182, § 2.

This regulation sets forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Emergency adoption of the regulation is necessary in order to ensure that New York banking organizations continue to be able to engage in derivative transactions on and after January 21, 2013.

Subject: Credit exposure arising from derivative transactions.

Purpose: To provide for the consideration of credit exposure relating to derivative transactions in calculating bank loan limits.

Text of emergency rule: PART 117

LENDING LIMITS: INCLUSION OF CREDIT EXPOSURES ARISING FROM DERIVATIVE TRANSACTIONS

§ 117.1 Definitions.

For the purposes of this Part:

a) The appropriate Federal banking agency of a bank shall be the agency specified by Section 3(q) of the Federal Deposit Insurance Act (FDIA), 12 USC § 1813(q), or the successor to such provision.

b) Bank includes a bank or trust company or a savings bank formed under the Banking Law whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

c) Credit derivative means a financial contract that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure) to another party (the protection provider).

d) The current credit exposure of a bank to a counterparty on a particular date with respect to a derivative transaction other than a credit derivative shall be the amount that the bank reasonably determines would be its loss under the terms of the derivative contract covering such transaction if the counterparty defaulted on such date.

e) The credit exposure of a bank to a counterparty arising from derivative transactions other than credit derivatives is the higher of zero or the sum of the then positive current credit exposures with respect to such derivative transactions, provided, however, that in calculating such credit exposure, the bank may take into account netting to the extent specified in section 117.4(a).

f) Derivative transaction includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

g) Effective margining arrangement means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds \$25 million created by the derivative transactions covered by the agreement.

h) Eligible credit derivative means a single-name credit derivative or a standard, non-tranched index credit derivative, provided that:

(1) The derivative contract is executed under standard industry credit derivative documentation and meets the requirements of an eligible guarantee and has been confirmed by both the protection purchaser and the protection provider;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, restructuring (for obligors not subject to bankruptcy or insolvency) or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(4) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract; and

(5) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process.

i) Eligible protection provider means:

(1) A sovereign entity (a central government, including the United States government; an agency; department; ministry; or central bank);

(2) This state or any city, county, town, village or school district of this state, the New York State Thruway Authority, the Metropolitan Transportation Authority, the Triborough Bridge and Tunnel Authority or The Port Authority of New York and New Jersey;

(3) Any state other than the State of New York,

(4) *The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;*

(5) *A Federal Home Loan Bank;*

(6) *The Federal Agricultural Mortgage Corporation;*

(7) *A depository institution, as defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c);*

(8) *A bank holding company, as defined in Section 2 of the Bank Holding Company Act, 12 U.S.C. § 1841;*

(9) *A savings and loan holding company, as defined in Section 10 of the Home Owners' Loan Act, 12 U.S.C. § 1467a;*

(10) *A securities broker or dealer registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq.;*

(11) *An insurance company that is subject to the supervision of a state insurance regulator;*

(12) *A foreign banking organization;*

(13) *A non-United States-based securities firm or a non-United States-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies;*

(14) *A qualifying central counterparty; and*

(15) *Such other entity or entities as may be designated from time to time by the superintendent.*

j) *Readily marketable collateral means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value.*

k) *Financial market utility shall have the same meaning as used in Section 803(6) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5462(6).*

l) *The following terms shall have the same meaning as used in the Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches (Capital Adequacy Guidelines) of the bank's appropriate Federal banking agency.¹*

i. *Eligible guarantee.*

ii. *Qualifying master netting agreement.*

iii. *Qualifying central counterparty.*

§ 117.2 General Rule.

a) *In computing the amount of loans of a bank outstanding to a person under Section 103.1 of the Banking Law or to a borrower under Section 235.8-c of the Banking Law at any specific time, the credit exposures of the bank arising from derivative transactions with respect to such person or borrower shall be included.*

b) *Such credit exposures shall be calculated as the sum of the bank's credit exposure to such person or borrower as a counterparty arising from derivative transactions other than credit derivatives plus the bank's credit exposure to such person or borrower as a counterparty arising from credit derivatives plus, where such person or borrower is the obligor on a reference exposure, the bank's credit exposure with respect to such person or borrower as obligor on such reference exposure arising from credit derivatives.*

§ 117.3 Credit Derivatives.

a) *Credit exposure to a counterparty. A bank shall calculate its credit exposure to a counterparty arising from credit derivatives by adding the net notional value of all protection purchased from the counterparty with respect to each reference exposure.*

b) *Credit exposure with respect to a reference exposure. A bank shall calculate the credit exposure with respect to a reference exposure arising from credit derivatives entered by the bank by adding the notional value of all protection sold on such reference exposure.*

c) *Exposure mitigants. In computing the exposures in paragraphs a and b hereof, the bank may take into account exposure mitigants to the extent specified in section 117.4.*

§ 117.4 Exposure Mitigants.

a) *Netting. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty with whom such bank has in force a qualifying master netting agreement, such bank may net the credit exposures covered by such qualifying master netting agreement.*

b) *Collateral. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty, such credit exposures may be reduced to the extent that such credit exposures have been secured with readily marketable collateral under an effective margining arrangement. The amount of such reduction shall be equal to the value of such collateral multiplied by the percentage applicable to such type of collateral as may be prescribed by the superintendent from time to time.*

c) *Hedging. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty or with respect to a particular reference exposure, such credit exposures may be reduced to the extent hedged by an eligible credit derivative from an eligible protection provider.*

§ 117.5 Exception.

In computing its credit exposures arising from derivative transactions, a bank need not include credit exposures to a qualifying central counterparty that has been designated by the Financial Stability Oversight Council as a financial market utility that is, or is likely to become, systemically important.

§ 117.6 Alternate Valuation Method.

With the permission of the superintendent, a bank may utilize an alternate method to evaluate its credit exposures arising from derivative transactions.

§ 117.8 Residual Authority of the Superintendent.

Where the method or methods used by a bank fails to appropriately reflect the credit exposures of the bank arising from derivative transactions, the superintendent may direct such bank to use an alternate method or methods.

¹ *In the case of a bank that is a member of the Federal Reserve System (member bank), the applicable definitions appear at Section 2 of Appendix F to 12 C.F.R. Part 208, and the case an Federally-insured bank that is not a member of the Federal Reserve System (nonmember insured bank), the applicable definitions appear at Section 2 of Appendix D to 12 C.F.R. Part 325.*

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires December 30, 2013.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1658, email: sam.abram@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority

Section 14 of the Banking Law provides that the Superintendent of Financial Services (the "Superintendent") shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the New York Banking Law (the "Banking Law") authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law (the "FSL") authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

2. Legislative Objectives

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y).

In response to federal enactment of Section 611 of DFA, the New York Legislature amended the Banking Law regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from certain types of transactions, including derivative transactions, shall be taken into account for purposes of the statutory loan limits. (L. 2011, c. 182).

This emergency regulation implements the Superintendent's authority by setting forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Note that state chartered or licensed entities subject to DFA Section 610, including savings associations, and branches and agencies of foreign banking organizations, are not covered by the regulation.

3. Needs and Benefits

Derivative transactions, including swaps and options, are a basic tool used by many banking organizations to manage exposure to various types of risk, including interest rate, currency and credit risk. If the state's lending limit rules do not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on state banks' ability to manage the exposures embedded in their existing balance sheets (including exposures from any derivatives contracts entered into prior to the cutoff date), as well as the risks arising out of their ongoing business. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave state banks at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

While noting that there already exists some flexibility in the lending

limit statute to interpret what constitutes credit exposure, the objective of the amendment was to provide certainty that New York law will comply with the requirements of DFA so as to ensure that insured banks in New York could continue to engage in derivative transactions after the cutoff date in Section 611 of DFA.

4. Costs

Banks that use derivatives already have systems in place to measure and manage the exposures incurred and their effect on the banks' overall risk position. The Department currently reviews such systems as part of its regular safety and soundness examination of regulated organizations.

It is believed that most state banks which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be comparatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for these banks are expected to be minimal.

Banks that engage in a larger volume of more complex derivatives transactions already have more sophisticated systems and processes in place for managing their risks, including those associated with derivatives transactions. The regulation provides that these institutions may, with the permission of the Superintendent, use an "alternative valuation method" to measure their credit exposure resulting from derivatives. Such institutions are expected to seek permission to use measurement methods which reflect their existing risk management procedures, thus minimizing the additional compliance costs resulting from the regulation.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not require that state banks produce any additional reports. Banks that use derivatives have internal systems to measure their exposures, including exposures resulting from derivatives. In the course of its regular safety and soundness examination, the Department expects to be able to review the bank's records and computations regarding compliance with applicable lending limits.

While a bank seeking permission from the Department to utilize an alternative valuation model will be expected to provide information supporting the reasonableness of the proposed model, it is anticipated that such models will normally already have been reviewed by the Department during the examination process.

7. Duplication

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

8. Alternatives

The Department could choose not to adopt a regulation with respect to loan limits that takes into consideration credit exposure to derivative transactions. However, under DFA Section 611 if such a regulation is not adopted insured state banks will not be able to engage in derivative transactions, a basic tool used by many banking organizations to manage their exposure to various types of risk, including interest rate, currency and credit risk. In addition, not adopting such a regulation would put state banks at a competitive disadvantage, since federally chartered banks will be able to continue to engage in derivative transactions to manage their exposure to risk.

The Department also considered adoption of a regulation similar to the interim rule adopted by the federal Office of the Comptroller of the Currency (the "OCC") regarding credit exposure arising from derivatives and securities financing transactions (the "OCC Interim Rule"). 77 FR 37265, 37275 (June 21, 2012), C.F.R. § 32 (2012). However, that rule is quite complex and requires institutions to devote significant resources to compliance. Given the non-complex nature of the derivatives activity of most state banks, the Department did not consider it necessary to impose such extensive requirements.

9. Federal Standards

Although DFA Section 611 prohibits state banks from engaging in derivative transactions after January 20, 2013 if state's law does not take into account credit exposure to derivative transactions, there are no federal standards for how state law is to do so.

The OCC Interim Rule applies to national banks and federal and state savings associations. Under Section 4 of the International Banking Act of 1978, federally licensed branches and agencies of foreign banks are generally subject to the same limitations on their activities as national banks. Thus, the OCC Interim Rule effectively applies to them as well and through the Foreign Bank Supervision Enhancements Act applies to state-licensed branches and agencies. See 12 USC § 3105(h). However, the OCC Interim Rule does not apply to state-chartered banks and savings banks.

10. Compliance Schedule

The regulation is effective immediately. However, it is recognized that

banks will require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology.

Regulatory Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are small businesses are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally-chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

This regulation does not have any impact on local governments.

2. Compliance Requirements

It is believed that most banks which are small businesses and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are small businesses, produce any additional reports.

3. Professional Services

Banks that are small businesses and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

Those banks that are small businesses and use derivatives generally engage in a relatively limited number of non-complex derivative transactions. For such banks it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for those banks that are small businesses.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are small businesses, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are small businesses, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013, to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are small businesses.

6. Minimizing Adverse Impacts

If the state's lending limit does not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are small businesses, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are small businesses, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Small Business and Local Government Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are small businesses. The regulation takes account of the comments received in the course of this process.

Rural Area Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are located in rural areas are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets, as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

2. Compliance Requirements

It is believed that most banks which are located in rural areas and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are located in rural areas, produce any additional reports.

3. Professional Services

Banks which are located in rural areas and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

To the extent banks located in rural areas use derivatives, they gener-

ally engage in a relatively limited number of non-complex derivative transactions. For such banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective [immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for banks that are located in rural areas.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are located in rural areas, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are located in rural areas, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013 to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are located in rural areas.

6. Minimizing Adverse Impacts

If the state's lending limit did not take account of credit exposure from derivatives transactions, DFA Section 611 would prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are located in rural areas, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are located in rural areas, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Rural Area Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are located in rural areas. The regulation takes account of the comments received in the course of this process.

Job Impact Statement

The regulation will not have an adverse impact on employment in the state. Banking organizations that engage in derivative transactions already have systems and staff in place to manage the credit and other risks associated with those transactions.

Conversely, failing to adopt the regulation could have an adverse impact on employment. Under DFA Section 611, state banks would be prohibited from engaging in derivative transactions and therefore would need to find other uses for staff currently involved in derivatives activity. Moreover, if state banks were no longer able to use derivatives to manage the risks resulting from their current types and levels of business, they might be forced to reduce or restructure the banking services they provide, which could have a further adverse impact on employment levels for both the banks and their customers.

Department of Health

NOTICE OF ADOPTION

Death Certificates

I.D. No. HLT-32-13-00015-A

Filing No. 970

Filing Date: 2013-10-08

Effective Date: 2013-10-23

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

Action taken: Amendment of section 35.4 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 4100(1) and (2)

Subject: Death Certificates.

Purpose: To issue a death certificate to any applicant upon the request of a sibling of the deceased.

Text or summary was published in the August 7, 2013 issue of the Register, I.D. No. HLT-32-13-00015-C.

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

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Hospice Operational Rules

I.D. No. HLT-43-13-00020-P

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

Proposed Action: Amendment of Parts 700, 717, 793 and 794 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 4010(4)

Subject: Hospice Operational Rules.

Purpose: To implement hospice expansion.

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov): This rule amends Sections 700.2 and 717.3 and Parts 793 and 794 of Title 10 (Health) of NYCRR, the operational rules for hospices approved to provide services in New York State under Article 40 of the Public Health Law. The changes will make state regulations consistent with the federal conditions of participation/rules, which were revised and implemented on December 3, 2008, as well as with Chapter 441 of the Laws of 2011.

Section 700.2 (Definitions) is amended to define hospice patient as a person in the terminal state of illness with a life expectancy of 12 months or less (instead of 6 months or less) who has voluntarily requested admission and been accepted into a hospice for which the department has issued a certificate of approval.

Section 717.3 (Patient and service areas in hospice inpatient facilities and units) is amended to reduce maximum room capacity from four to two patients as required by new federal rules.

Section 793.1 (Patient Rights) sets forth patient rights for hospice patients and requires alleged violations of mistreatment, neglect or abuse to be investigated and reported to the State, if verified.

Section 793.2 (Eligibility, Election, Admission and Discharge) sets forth provisions for determining eligibility for and admitting persons into a hospice program as well as requirements for discharging a hospice patient.

Section 793.3 (Initial and Comprehensive Assessment) requires hospices to complete initial and comprehensive assessments and reassessments within specified time periods and identifies the information required in such assessments.

Section 793.4 (Patient Plan of Care, Interdisciplinary Group and Coordination of Care) defines the interdisciplinary group members responsible for management of hospice care, identifies the responsibilities of the group, and lists the information required in the hospice plan of care.

Section 793.5 (Quality Assessment and Performance Improvement) sets forth requirements for the hospice quality assessment and performance improvement program. Hospices will be required to track performance indicators and conduct performance improvement projects.

Section 793.6 (Infection Control) sets forth requirements for management of an infection control program including policies and procedures for preventing and managing persons exposed to blood borne pathogens and appropriate training of staff.

Section 793.7 (Staff and Services) identifies the types of personnel a hospice is expected to employ and their responsibilities. This section also clarifies employment options (direct or contract), qualifications and supervision requirements strengthening the onsite supervision home health aide requirement.

Section 794.1 (Governing Authority) lists the responsibilities of the governing authority. It also sets forth requirements for a patient complaint investigation process and emergency plan. This section also requires hospices to obtain and maintain a Health Commerce System account as a communication link with the Department of Health.

Section 794.2 (Contracts) sets forth contract requirements between the hospice and individual, facility or agency providers delivering services on behalf of the hospice. This section also specifies requirements for management contracts and explains those responsibilities that may not be delegated by the governing body.

Section 794.3 (Personnel) sets forth personnel requirements including health requirements, identification and reference checks, maintenance and content of personnel records, job descriptions and orientation, performance appraisal and inservice education.

Section 794.4 (Clinical Record) sets forth requirements for maintenance and content of clinical records. Record retention standards are also included in this section.

Section 794.5 (Short Term Inpatient Service) sets forth structural and operational standards for the provision of short term inpatient service by the hospice. Physical plant, staffing, quality of life and patient comfort measures are addressed. This section also sets forth operational requirements for management and coordination of care.

Section 794.6 (Hospice Residence Service) sets forth requirements for hospice residences, when a hospice chooses to offer a hospice operated home to a hospice patient without a suitable home in which to receive services.

Section 794.7 (Leases) sets forth information which must be included in a lease agreement between a hospice and an inpatient setting or hospice residence.

Section 794.8 (Hospice Care Provided to Residents of a Skilled Nursing Facility (SNF) or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) identifies responsibilities of the hospice and the facility when a resident elects the hospice benefit. Services expected to be provided by the hospice and the facility are clarified, and development and implementation of collaborative plans of care and care coordination between the two entities is required.

Section 794.9 (Records and Reports) identifies those records which must be maintained by the hospice, and the retention timeframes. This section also specifies reports which must be submitted to the Department of Health.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.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.

Regulatory Impact Statement

Statutory Authority:

Section 4010(4) of the Public Health Law authorizes the adoption and amendment of regulations for hospice providers approved pursuant to PHL Article 40 (Hospices). Section 4002 of the Public Health Law is amended by adding a new subdivision 5 to read as follows: "Terminally ill" means an individual has a medical prognosis that the individual's life expectancy is approximately one year or less if the illness runs its normal course.

Legislative Objective:

PHL Article 40 provides for Hospice care to offer persons with terminal illness an appropriate palliative care alternative to curative treatments and to protect such vulnerable individuals through the imposition of care delivery standards for providers. It is the legislative intent that hospice's interdisciplinary program and innovative approach to home and inpatient services be available statewide. These proposed regulations further this objective by expanding the definition of terminal illness to allow individuals the benefit of hospice care earlier in their terminal illness to manage their symptoms on an ongoing basis, thereby reducing the need for costly emergency room visits and hospital stays.

Needs and Benefits:

The proposed rule making was necessitated by changes in the federal conditions of participation/rules for hospice providers and recent Medicaid Redesign Initiatives. State rules have been revised and reordered to be consistent with federal rules to facilitate provider compliance and surveillance activities. Revisions to federal and state rules are intended to improve care delivery processes and support performance improvement activity at the provider level. Additionally, amendments were necessitated by Chapter 441 of the Laws of 2011, signed by the Governor on August 17, 2011 and Medicaid Redesign efforts to expand hospice benefits. Individuals could benefit from receiving hospice services earlier in their terminal illness, by having their symptoms managed on an on-going basis, thereby reducing the need for emergency room visits and hospital stays.

Costs:**Costs to Regulated Parties:**

Nominal costs may be incurred by hospice providers if coordination, management and documentation of care has not been effectively implemented by the hospice; or if data driven, outcome based quality assessment and performance improvement activities have not been taking place. These nominal costs are associated with federal quality assessment and performance improvement program requirements and would have to be incurred regardless of the proposed regulatory changes. There are currently 48 hospices in New York State.

Costs to the Agency and to the State and Local Governments Including this Agency:

The change in hospice patient eligibility which allows individuals with a 12 month life expectancy to elect the hospice benefit, has been estimated to have a net aggregate increase in gross Medicaid expenditures of \$1,704,658. The aggregate NY State and Local Government share of the increase in Medicaid expenditures is approximately \$400,000 for State government, and another \$400,000 for local governments in the aggregate. Pursuant to 42 CFR Section 447.205, the Department gave public notice in December 2011 to amend the NYS Medicaid Plan for hospice services to expand access to the hospice benefit. No additional costs are anticipated for the Agency or for State and Local Governments.

Local Government Mandates:

There are no local mandates in this rule. However, 6 counties operate hospice programs and will be required to meet these rules in the same manner as will private entities, as there is no exemption authority for publicly sponsored programs.

Paperwork:

Under the proposed rules, providers will now be required to report verified incidences of mistreatment or abuse to the Department of Health and or state/local bodies having jurisdiction, as required by federal rules. All other reporting requirements are consistent with existing regulations.

Duplication:

Proposed rules will be duplicative of, but consistent with, federal rules. There are no known conflicts with federal rules; consistency should facilitate provider compliance and improve effectiveness of surveillance processes.

Alternatives:

The Department could choose to retain existing standards in which case federal rules would supersede State rules where gaps or inconsistency exist. This option was rejected as it would be confusing to both providers and surveyors. Furthermore, conforming state requirements to the federal requirements will facilitate the enforcement of both.

Federal Standards:

Section 418 of 42 CFR sets forth the federal rules for hospices. The proposed State rules are consistent with federal rules, but do exceed federal rules as follows:

- The quality assessment and performance improvement section includes the requirement to have a quality committee to assure comprehensive representation and involvement in quality activities and to assure a broader quality oversight process at the provider level. This is a state requirement that is not included in the federal rules.
- Infection control includes standards for prevention and management of HIV and other bloodborne pathogen infections, consistent with existing standards for all provider types in NYS. The standards exceed federal rules by including the required program specifications.
- The responsibilities of the governing body are more clearly delineated in the proposed rules than in the federal rules, including implementation of a complaint investigation procedure and requiring that the governing body obtain a Health Commerce System account for communication with the Department.
- The proposed rule specifically states the requirements for contracts, including management contracts, to ensure hospice and provider accountability and governing body responsibilities. Such requirements are not stated in the federal rules.
- Health requirements for personnel are specific and consistent with other provider types in NYS to assure adequate patient care protection.

Job descriptions, employee identification and personnel records are also required as appropriate business practices. These requirements are not stated in the federal rules.

Compliance Schedule:

As the amendments ensure conformance with federal standards that were already in effect as of December 3, 2008, and any state requirements exceeding federal rules are already in effect, regulated parties should already be in compliance, and should readily be able to comply as of the effective date of these regulations.

Regulatory Flexibility Analysis**Effect of Rule:**

Local governments will not be affected by this rule except to the extent that they are providers of hospice services. There are 6 county-based hospice providers. The small businesses which will be affected are hospice providers which employ fewer than 100 persons. There are approximately 36 small business hospices in NYS.

Compliance Requirements:

Regulated parties are expected to be in immediate compliance as these rules are consistent with federal standards already in effect as of Dec. 3, 2008, and rules that exceed the federal rules are already in place for existing hospice providers in NYS. The proposed regulations will create a new state reporting requirement, consistent with federal rules, for reporting verified instances of patient mistreatment, abuse or neglect to the Department or to other state and local authorities. The reporting will be done through existing complaint reporting mechanisms. The proposed regulations also require the hospice to report to the Department data on quality indicators and patient outcomes, which will be the basis for performance improvement activities. This may require additional staff training and electronic data systems at the hospice. The Department implemented a hospice quality initiative intended to assist hospices with meeting this requirement. All other reporting requirements mentioned in the proposed regulations currently exist for the hospice providers.

The Department does not intend to publish a small business regulation guide in connection with this regulation. Although a number of hospices are small businesses, the impact is not expected to be substantial. Additional guidance will be posted on the web as needed after the regulation is promulgated.

Professional Services:

No additional professional staff are expected to be needed as a result of the regulations. Quality assessment and performance improvement requirements could be handled by existing staff with appropriate training, unless staff shortages already exist at the hospice.

Compliance Costs:

There are no capital costs associated with these proposed rules. Additional costs may be associated with maintaining and analyzing data and carrying out performance improvement activities. The costs for small businesses and county sponsored hospices should not be significantly different from the costs to other affected providers.

Economic and Technological Feasibility:

The Department has considered feasibility and believes the rules can be met with minimal economic and technological impact. Departmental resources have been identified to assist hospices with quality indicators and performance improvement. Other regulations should not affect the routine cost of doing business.

Minimizing Adverse Impact:

While the Department has considered the options of State Administrative Procedure Act (SAPA) Section 202-b(1) in developing this rule, flexibility does not exist for any particular entity since the new requirements are consistent with new federal rules already in effect.

Small Business and Local Government Participations:

The Hospice and Palliative Care Association of NYS, which represents 47 of the 48 hospices statewide, were included during the development of the proposed rulemaking. The Department will meet the requirements of SAPA Section 202-b(6) in part by publishing a notice of proposed rulemaking in the State Register with a comment period. The Department will also conduct a meeting with the State-wide provider associations representing hospices and county-based hospice providers.

Rural Area Flexibility Analysis**Types and Estimated Numbers of Rural Areas:**

All counties in NYS have rural areas with the exception of 7 downstate counties. Counties with rural areas are served by 34 of the existing 48 hospices in NYS.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Regulated parties are expected to be in immediate compliance as these rules are consistent with federal standards already in effect as of Dec. 3, 2008, and rules that exceed the federal rules are already in place for existing hospice providers in NYS.

The proposed regulations will create a new state reporting requirement,

consistent with federal rules, for reporting verified instances of patient mistreatment, abuse or neglect to the Department or other state and local authorities. The reporting will be done through existing complaint reporting mechanisms. The proposed regulations also require the hospice to report to the Department data on quality indicators and patient outcomes, which will be the basis for performance improvement activities. This may require additional staff training and electronic data systems at the hospice. The Department implemented a hospice quality initiative intended to assist hospices with meeting this requirement. All other reporting requirements mentioned in the proposed regulations currently exist for the hospice providers.

Additional quality indicator and outcome data will need to be maintained in support of the reporting of the quality indicators and patient outcomes. This can be accomplished by existing clinical and/or administrative staff with appropriate training. Professional personnel required of the hospice is unchanged from existing requirements.

Costs:

There are no capital costs associated with these rules; any such costs would result from new federal rules, regardless of whether amendments were made to state regulation. Additional training of staff in quality assessment and performance improvement may be required to be in compliance with the requirements of the new federal rules.

Minimizing Adverse Impact:

While the Department has considered the options in State Administrative Procedure Act (SAPA) Section 202-bb(2)(b), the proposed regulatory changes are consistent with new federal requirements. Therefore, Department authority to minimize impact is limited. Adverse impact is expected to be minimal.

Rural Area Impact:

The Department will meet the requirements of SAPA Section 202-bb(7) in part by publishing a notice of proposed rulemaking in the State Register with a comment period. The Department will also conduct a meeting with the statewide provider organization representing hospice providers.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. The proposed regulations are intended to be consistent with current federal rules and also expand the definition of "terminal illness" to allow expanded access to hospice services and improve patient care. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities.

New York State Joint Commission on Public Ethics

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Source of Funding Reporting

I.D. No. JPE-43-13-00021-EP

Filing No. 971

Filing Date: 2013-10-08

Effective Date: 2013-10-08

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

Proposed Action: Amendment of Part 938 of Title 19 NYCRR.

Statutory authority: Legislative Law, sections 1-j(c)(4) and 1-h(c)(4); and Executive Law, section 94(9)(c)

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

Specific reasons underlying the finding of necessity: The Public Integrity Reform Act of 2011 ("PIRA") was enacted in August 2011. PIRA established the new "source of funding" disclosure requirement, which became effective on June 1, 2012. The purpose of source of funding disclosure requirements is to promote transparency so that the public can appreciate the actual parties in interest who are substantially influencing the governmental decision making process.

The Source of Funding disclosure requirement was created by amending the Legislative Law to include a requirement that Client Filers, which

are lobbyists and clients of lobbyists who spend at least \$50,000 in reportable compensation and expenses and 3% of total expenditures on lobbying activities in New York State in a calendar year or twelve-month period (the "\$50,000/3% expenditure threshold"), disclose the sources of funding over \$5,000 from each source used for such lobbying activities in New York State. PIRA mandates that JCOPE promulgate regulations implementing this new disclosure requirement. PIRA also provides that JCOPE shall specify a procedure for filers to seek an exemption if disclosure of a particular source—or, in the case of certain organizations with tax-exempt status under I.R.C. § 501(c)(4), a class of sources—would cause harm, threats, harassment, or reprisals to the source(s) or to individuals or property affiliated with the source(s), as well as an appeal procedure from denials of requests for such exemptions.

This emergency adoption is necessary because applications for an exemption from the source of funding disclosure requirements are pending with JCOPE. Until such time as JCOPE determines how to treat the materials submitted in support of a request for an exemption and the substantive standard to be applied in determining if the request is to be granted, the requesting entities are not required to disclose their sources of funding. Consequently, the timely and relevant disclosure of statutorily required information may be forestalled until the regulations are in effect.

Subject: Source of funding reporting.

Purpose: To implement reporting that will inform the public of efforts to influence government decision making by lobbying entities.

Substance of emergency/proposed rule (Full text is not posted on a State website): The Public Integrity Reform Act of 2011 ("PIRA") authorizes JCOPE to exercise the powers and duties set forth in Executive Law Section 94 with respect to lobbyists and clients of lobbyists as such terms are defined in article one-A of the Legislative Law. PIRA also amended the Legislative Law to include a requirement that lobbyists and clients of lobbyists who spend at least \$50,000 in reportable compensation and expenses and 3% of total expenditures on lobbying activities in New York State in a calendar year or twelve-month period (the "expenditure threshold"), disclose the sources of funding over \$5,000 from each source used for such lobbying activities in New York State. PIRA mandates that JCOPE promulgate regulations implementing this new disclosure requirement. PIRA also provides that JCOPE shall specify a procedure in these regulations for filers to seek an exemption if the filer can establish that there is a substantial likelihood that disclosure of a particular source - or, in the case of certain organizations with tax-exempt status under I.R.C. § 501(c)(4), a class of sources - would cause harm, threats, harassment, or reprisals to the source(s) or to individuals or property affiliated with the source(s), as well as an appeal procedure from denials of requests for such exemptions. Thus, these regulations provide comprehensive reporting requirements that set forth when and how sources of funding must be disclosed by lobbyists and clients who meet the expenditure threshold, articulate narrow standards for exempting sources from disclosure and establish an appeal process for denials from such exemptions.

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 January 5, 2014.

Text of rule and any required statements and analyses may be obtained from: Shari Calnero, Senior Counsel, Joint Commission on Public Ethics, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: regs@jcope.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority: Legislative Law Section 1-h(c)(4) requires certain registered lobbyists whose lobbying activity is performed on its own behalf and not pursuant to retention by a client, and who meet the "\$50,000-3% Expenditure Threshold" (referred to herein), to report the names of each source of funding over \$5,000 from a source used to fund lobbying activities in New York State. Similarly, Legislative Law Section 1-j(c)(4) requires certain clients who have retained, employed or designated a registered lobbyist, and who meet the "\$50,000-3% Expenditure Threshold," to report the names of each source of funding over \$5,000 from a source used to fund lobbying activities in New York State. These lobbyists and clients are referred to in the proposed revised regulation and herein as "Client Filers." The statute also provide that, in certain circumstances, Client Filers can seek an exemption from disclosing one or more of their sources provided certain criteria for exemption are met. Legislative Law Sections 1-h(c)(4) and 1-j(c)(4) direct the Joint Commission on Public Ethics ("JCOPE") to promulgate regulations to implement these requirements. More generally, Executive Law Section 94(9)(c) directs JCOPE to adopt, amend, and rescind rules and regulations to govern JCOPE procedures.

2. Legislative objectives: The Public Integrity Reform Act of 2011 (“PIRA”) established JCOPE. PIRA authorizes JCOPE to exercise the powers and duties set forth in Executive Law Section 94 with respect to lobbyists and clients of lobbyists as such terms are defined in article one-A of the Legislative Law. PIRA also amended the Legislative Law to include a requirement that Client Filers who spend at least \$50,000 in reportable compensation and expenses and 3% of total expenditures on lobbying activities in New York State in a calendar year or twelve-month period (the “\$50,000/3% Expenditure Threshold”), disclose the sources of funding over \$5,000 from each source used for such lobbying activities in New York State. PIRA mandates that JCOPE promulgate regulations implementing this new disclosure requirement. PIRA also provides that JCOPE shall specify a procedure for filers to seek an exemption if the filer can establish that disclosure of a particular source—or, in the case of certain organizations with tax-exempt status under I.R.C. § 501(c)(4), a class of sources—would cause harm, threats, harassment, or reprisals to the source or to individuals or property affiliated with the source, as well as an appeal procedure from denials of requests for such exemptions. By setting forth when and how sources of funding must be disclosed by lobbyists and clients who meet the statutory conditions, as well as the standards and procedures for exempting sources from disclosure, these rules strike an appropriate balance between disclosure and confidentiality.

3. Needs and benefits: The proposed rulemaking is limited in its scope as it applies solely to provisions related to exemptions to the source of funding disclosure requirement. The first proposed revision is to Part 938.4, which contains, among other provisions, the substantive standard JCOPE is to apply when considering whether to grant a request for an exemption from the disclosure requirements. Currently, a filer must demonstrate that disclosure will cause a “reasonable probability” of harm or reprisals to specified individuals or entities. The proposed rulemaking would, in order to comport with the statutory language in Legislative Law article 1-A sec. 1-h(c)(4)(ii), change the “reasonable probability” standard to a “substantial likelihood.”

The second proposed revision is to Part 938.8, which concerns the confidentiality of information submitted by filers in connection with a request for an exemption from the disclosure requirements. Under the current regulations, such materials are confidential and are not, therefore, publicly available. The proposed rulemaking provides for more transparency by significantly altering this provision to make all information submitted in connection with an application for an exemption or in support of an appeal from a denial of an exemption publicly available. The proposed rulemaking does allow for a filer to make a request to JCOPE to treat specified exemption-related information as confidential under circumstances where such treatment is merited. The decision to grant such a request would lie within the sole discretion of JCOPE.

4. Costs:

a. costs to regulated parties for implementation and compliance: Minimal.

b. costs to the agency, state and local government: No costs to state and local governments. Moderate administrative costs to the agency during the implementation phase.

c. cost information is based on the fact that there will be no costs to regulated parties and state and local government. The cost to the agency is based on the estimated increase in staff resources to implement the regulations.

5. Local government mandate: The proposed regulation does not impose new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This proposed regulation may require the preparation of additional forms or paperwork. Such additional paperwork is expected to be minimal, and many filers will complete any additional forms online.

7. Duplication: This proposed regulation does not duplicate any existing federal, state or local regulations.

8. Alternatives: PIRA created an affirmative duty on JCOPE’s part to promulgate these regulations, therefore there is no alternative to conducting a formal rulemaking.

9. Federal standards: The proposed rulemaking pertains to lobbying disclosure requirement in New York State. These regulations do not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: Compliance will take effect immediately.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice of Emergency Adoption and Proposed Rulemaking since the proposed rulemaking will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, record-keeping or other affirmative acts on the part of these entities for compliance purposes. The New York State Joint Commission on Public Ethics Commission (“JCOPE”)

notes that while it is authorized by the Public Integrity Reform Act of 2011 (“PIRA”) to enforce the reporting requirements of the Article 1-A of the Legislative Law, which requires those public corporations that conduct lobbying activity to register and report expenses in accordance with the law, these regulations do not impose any adverse economic impact on those public corporations for compliance purposes. JCOPE makes these findings based on the fact that the source of funding regulations affect certain lobbyists and clients that meet a high financial threshold. Small businesses and local governments are not affected in any way by these regulations.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice of Emergency Adoption and Proposed Rule Making since the proposed rule making will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, record-keeping or other affirmative acts on the part of rural areas. The Joint Commission on Public Ethics makes these findings based on the fact that the source of funding regulations affect only certain lobbyists and clients that meet a high financial threshold. Rural areas are not affected in any way.

Job Impact Statement

A Job Impact Statement is not submitted with this Notice of Emergency Adoption and Proposed Rule Making since the proposed rulemaking will have no impact on jobs or employment opportunities. The Joint Commission on Public Ethics makes this finding based on the fact that the proposed rule making applies only to certain lobbyists and clients that meet a high financial threshold. This regulation does not apply, nor relate to small businesses, economic development or employment opportunities.

Department of Law

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Private and Public Litigation Under Art. XIII of the State Finance Law

I.D. No. LAW-43-13-00022-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 400.4; and addition of sections 400.5-400.8 to Title 13 NYCRR.

Statutory authority: State Finance Law, section 194

Subject: Private and public litigation under Art. XIII of the State Finance Law.

Purpose: To comply with section 1909 of the U.S. Social Security Act, and clarify procedures and applications of Art. XIII of the State Finance Law.

Text of proposed rule: A new subdivision (d) is added to section 400.4 of Title 13, Part 400 to read as follows:

(d) If the state or a local government decides not to intervene or supersede in a qui tam action, the qui tam plaintiff may not pursue the qui tam action on a pro se basis unless the qui tam plaintiff is an attorney eligible to represent a party before the court in which the qui tam action is proceeding.

New sections 400.5-400.8 are added to Title 13, Part 400 to read as follows:

400.5 Public disclosure bar motions

The state shall not seek to dismiss, and shall oppose the dismissal, of a qui tam action pursuant to paragraph (b) of subdivision nine of section one hundred ninety of the New York False Claims Act in the event that:

(a) any cause of action in the qui tam plaintiff’s complaint would be dismissed other than a cause of action alleging substantially the same allegations or transactions that have been publicly disclosed in a manner set forth in such paragraph (b); or

(b) any cause of action in the qui tam plaintiff’s complaint would be dismissed pursuant to subparagraph (ii) of such paragraph (b) solely because of an alleged public disclosure in a federal report, hearing, audit, or investigation.

400.6 Application of the damage multiplier

The state or a local government’s damages shall be trebled or doubled pursuant to section one hundred eighty-nine of the New York False Claims

Act before any subtractions are made for compensatory payments received by the government from any source, including but not limited to the defendant, or before any subtractions are otherwise made because of any offset or credit received by the government from any source, including but not limited to the defendant.

400.7 Obligations

(a) For purposes of paragraph (g) of subdivision one of section one hundred eighty nine of the New York False Claims Act, an "obligation" can be an obligation of any person and does not have to be an obligation of the person who knowingly makes, uses, or causes to be made or used, a false record or statement material to such obligation to pay or transmit money or property to the state or a local government.

(b) For purposes of paragraph (h) of subdivision one of section one hundred eighty nine of the New York False Claims Act, an "obligation" can be an obligation of any person and does not have to be an obligation of the person who knowingly conceals or who knowingly and improperly avoids or decreases such obligation to pay or transmit money or property to the state or a local government, or who conspires to do the same.

400.8 Payment of costs and attorneys' fees

A person who violates section one hundred eighty-nine of the New York False Claims Act shall be liable for the costs, including attorneys' fees, of a civil action brought to recover penalties or damages. Such person shall pay all costs borne by the state, a local government, a qui tam plaintiff, or counsel, as may be applicable. All such costs shall be awarded directly against the defendant and shall not be charged from the proceeds, but shall only be awarded if the state, local government or a qui tam plaintiff prevails in the action.

Text of proposed rule and any required statements and analyses may be obtained from: Gregory M. Krakower, Department of Law, 120 Broadway, 25th Floor, New York, NY 10271, (212) 416-8030, email: gregory.krakower@ag.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: Section 194 of the State Finance Law empowers the Attorney General to adopt such rules and regulations as is necessary to effectuate the purposes of New York False Claims Act. See State Fin. Law, Art. XIII, § 187-194 (hereinafter "the Act").

2. Regulatory objectives: These rules and regulations (hereinafter referred to as "the rule") are in accordance with public policy objectives the Legislature sought to advance by passing the Act, including the recovery of funds or property fraudulently obtained or retained from the state and local governments, and the prevention and deterrence of fraud against the state and local governments. The rule seeks to reduce the risk of unnecessary litigation for qui tam plaintiffs, the state, local governments, and defendants. The rule clarifies the parameters and scope of the Act in regards to: pro se litigation, the damages multiplier, obligations, and costs and attorneys' fees for the state. Critically, the rule also ensures that the state will maintain compliance with section 1909 of Social Security Act, 42 U.S.C. § 1396h (the "Deficit Reduction Act of 2005"). Compliance with the Deficit Reduction Act of 2005 allows the state to retain an additional twenty percent of all Medicaid fraud recoveries obtained from actions brought under the Act that would otherwise be given to the federal government. This is a difference worth tens of millions of dollars annually.

3. Needs and benefits: The rule is needed to realize the full potential of the Act's enforcement and recovery powers; clarify terms for the state, local governments, and potential and actual qui tam plaintiffs and defendants; and ensure that the state is allowed to retain an additional twenty percent of Medicaid fraud recoveries obtained from actions brought under the Act that would otherwise be given to the federal government. Specifically, the benefits derived from the rule are as follows:

(A) Subdivision d of Section 400.4 prohibits plaintiffs from pursuing qui tam actions on a pro se basis after the state or a local government declines to intervene or supersede in the action, unless the pro se plaintiff is eligible to represent a party before the court in which the case is proceeding. This new subdivision ensures that qui tam cases in which the state or a local government does not intervene or supersede are litigated by qualified attorneys who can adequately represent the interests of the state or a local government in a court proceeding. The rule also protects defendants from unmeritorious cases that, having been rejected by the state and local governments, and private counsel, might otherwise be pursued by pro se plaintiffs. The rule is consistent with federal case law that would similarly prevent pro se qui tam plaintiffs from pursuing qui tam actions after the government declined to intervene or supersede in the action. See, e.g., *United States ex rel. Mergent Services v. Flaherty*, 540 F.3d 89, 93 (2d Cir. 2008). This case law is very likely to be applied by New York courts as well, and the rule accordingly puts potential qui tam plaintiffs on notice of this limitation on pro se litigation.

(B) Section 400.5 addresses section 190(9)(b) of the Act, the so-called "public disclosure bar". This rule is consistent with the public disclosure bar of the United States False Claims Act, see 31 U.S.C. § 3730(e)(4)(A), and, as applied to Medicaid cases, is required to comply with the Deficit Reduction Act of 2005 so that the state continues to retain an additional twenty percent of all Medicaid fraud recoveries obtained from actions brought under the Act that would otherwise be given to the federal government. The additional amount retained as a result of complying with the Deficit Reduction Act of 2005 is tens of millions of dollars annually. Section 400.5(a) codifies the policy of the state that a qui tam complaint with several causes of action will not be dismissed in its entirety if only some, but not all, of the causes of action are dismissed because of publicly disclosed information. This subsection will encourage the filing of valid qui tam complaints. Section 400.5(b) encourages meritorious qui tam actions to be filed involving undisclosed federal reports that have not resulted in state or local government enforcement actions. Both subsections will facilitate the recovery of funds or property fraudulently obtained or retained from the state and local governments, and prevent and deter fraud against the state and local governments.

(C) Section 400.6 clarifies that the damage multiplier in section 189 of the Act results in "gross trebling" or "gross doubling" and not "net trebling" or "net doubling". The rule holds that the damage multiplier applies to the full damages resulting from the fraud, before any subtractions are made for compensatory payments received by the government from any source, including the defendant, or that are otherwise made because of any offset or credit received by the government from any source, including the defendant. With regard to the damage multiplier, federal courts have inconsistently interpreted identical language in the United States False Claims Act with regard to whether it requires the gross or net amount to be multiplied. While some courts have interpreted this language to require the multiplying of the net amount, see, e.g., *United States v. Anchor Mortg. Corp.*, 711 F.3d 745, 748-51 (7th Cir. 2013), other courts have interpreted the language to require the gross amount to be multiplied, see, e.g., *United States v. Eghbal*, 548 F.3d 1281, 1285 (9th Cir. 2008). This rule adopts the gross multiplier rule in order to better facilitate the recovery of funds or property fraudulently obtained or retained against the state and local governments, and to better prevent and deter fraud against the state and local governments. For example, without this rule, a defendant that has already been investigated and sued by the state or a local government could escape the statutory damage multiplier by simply paying the government an offset or a credit before the judgment of multiplied damages is entered. By increasing the government's recovery, the rule also encourages potential qui tam plaintiffs to file valid qui tam complaints and cautions government contractors and large taxpayers against defrauding the government. The rule also resolves the confusion created by inconsistent federal case law, and thus puts the state, local governments, qui tam plaintiffs, and potential defendants on notice of the proper scope of the damage multiplier.

(D) Section 400.7 confirms that an "obligation" under sections 189(1)(g) and 189(1)(h) of the Act can be an "obligation" of any person, including but not limited to the obligation of the defendant. The rule will better facilitate the recovery of funds or property fraudulently obtained or retained, and better prevent and deter fraud against the state and local governments.

(E) Section 400.8 clarifies that any costs and attorneys' fees awarded to the state are awarded and paid in the same manner as costs and fees that are awarded to local governments or qui tam plaintiffs.

4. Costs: There are no costs of implementing or complying with the rule. The rule might result in a small increase in the number of qui tam actions being filed, which will have to be reviewed by the Attorney General's office.

5. Local government mandates: This rule imposes no responsibilities or duties on local governments.

6. Paperwork: This rule imposes no additional reporting requirements or paperwork requirements.

7. Duplication: The rule does not duplicate any existing state or federal law.

8. Alternatives: The Attorney General considered applying section 400.5 of the rule only to qui tam complaints involving the Medicaid program. Doing so would comply with the Deficit Reduction Act of 2005, while allowing the state to make case-by-case determinations as to whether to oppose the dismissal of non-Medicaid complaints described in that section pursuant to the public disclosure bar. The Attorney General ultimately rejected this approach to encourage the filing of all meritorious qui tam complaints, to facilitate the recovery of funds or property fraudulently obtained or retained from the state and local governments, and to better prevent and deter fraud against the state and local governments.

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

10. Compliance schedule: Compliance with this rule could be achieved immediately upon effect of the adoption of this rule.

Regulatory Flexibility Analysis

1. Effect of rule on small businesses and local governments. (A) Small businesses. By virtue of its subject matter, the rule will have no impact on small businesses, unless the business becomes involved in litigation under the Act. For example, pursuant to section 400.5, a small business acting as a qui tam plaintiff may now pursue causes of actions that might otherwise have been dismissed pursuant to the statutory public disclosure bar. Under section 400.6 it is now clear that a small business that brings a successful qui tam action will receive a larger award than if the Act had been interpreted to apply the damage multiplier on the net, not gross, damages of the fraud. A small business that is liable under the Act will not be able to avoid the full effect of the damages multiplier. Section 400.4(d) also reduces the risk of a non-meritorious or abusive qui tam action being litigated against a small business. (B) Local governments. The rule may apply to every county, city, town, village, school district, board of cooperative educational services, local public benefit corporation or other municipal corporation or political subdivision of the state, as defined in section 188(6) of the Act. Local governments will benefit overall from the rule because it encourages more meritorious qui tam actions to be filed on their behalf, clarifies that the full damage multiplier is applied to recoveries, and will deter fraud against such governments.

2. Compliance requirements: The rule imposes no compliance requirements.

3. Compliance costs: The rule imposes no compliance costs.

4. Feasibility of compliance: Because the rule does not impose any compliance requirements, but only clarifies the viability of certain claims brought and the scope of liability under the Act, small businesses and local governments will easily be able to comply with the rule.

5. Minimizing adverse impact: The rule will not have a significant adverse impact on small businesses or local governments. Indeed, local governments will benefit from the rule from increased recoveries of fraudulently obtained, or retained, funds and property. A handful of small businesses found to have defrauded the government will be potentially adversely impacted because the rule prevents them from avoiding the full effect of the damages multiplier. The rule minimizes these effects by protecting small businesses from abusive or non-meritorious qui tam actions litigated on a pro se basis by qui tam plaintiffs.

6. Economic and technological feasibility: The rule imposes no technological requirements.

7. Local government and small business participation: In order to ensure that small businesses and local governments have an opportunity to participate in the rule making process, a copy of the proposed rules has been sent to the Executive Director of the New York State Association of Counties, the New York Conference of Mayors, and the Taxpayers Against Fraud Education Fund. A copy of the proposed rules will also be posted on the web site of the Attorney General of the State of New York.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The rule applies uniformly throughout the state, including all rural areas. Executive Law, Article 19-F Rural Affairs Act, Section 481(7) defines a rural area as a county with a population of less than 200,000. New York currently has 44 counties that would constitute rural areas. The rule applies to businesses in rural areas that may become involved in an action under the Act, either as a qui tam plaintiff, counsel to a qui tam plaintiff, or defendant.

2. Compliance requirements: This rule imposes no compliance requirements on rural areas and requires no additional professional services from any entity.

3. Compliance costs: The rule imposes no compliance costs.

4. Minimizing adverse impact: By virtue of its subject matter, the rule will not have an adverse impact on rural areas.

5. Rural area participation: In order to ensure that public and private interests in rural areas have an opportunity to participate in the rule making process, a copy of the proposed rules will be sent to the Executive Director of the New York Association of Counties. A copy of the proposed rules will also be posted on the web site of the Attorney General of the State of New York.

Long Island Power Authority

NOTICE OF ADOPTION

Service Classification No. 11 – Buyback Service of the Authority’s Tariff

I.D. No. LPA-29-13-00022-A

Filing Date: 2013-10-04

Effective Date: 2013-10-04

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

Action taken: The Long Island Power Authority adopted a proposal to modify its Tariff for Electric Service (“Tariff”), Service Classification No. 11 – Buyback Service, to purchase 100 MW of solar photovoltaic renewable resources.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)
Subject: Service Classification No. 11 – Buyback Service of the Authority’s Tariff.

Purpose: To modify the Tariff, Service Classification No. 11 – Buyback Service.

Text or summary was published in the July 17, 2013 issue of the Register, I.D. No. LPA-29-13-00022-P.

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

Text of rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

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

NOTICE OF ADOPTION

Submetering Provisions of the Authority’s Tariff

I.D. No. LPA-29-13-00023-A

Filing Date: 2013-10-04

Effective Date: 2013-10-04

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

Action taken: The Long Island Power Authority adopted a proposal to modify and add to its Tariff for Electric Service (“Tariff”) with regard to residential submetering.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: The submetering provisions of the Authority’s Tariff.

Purpose: To modify and add to the Tariff with regard to residential electric submetering.

Text or summary was published in the July 17, 2013 issue of the Register, I.D. No. LPA-29-13-00023-P.

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

Text of rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

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

NOTICE OF ADOPTION

Authority's Tariff Regarding the Charge for Historical Customer Bill Information

I.D. No. LPA-29-13-00024-A

Filing Date: 2013-10-04

Effective Date: 2013-10-04

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

Action taken: The Long Island Power Authority adopted a proposal to modify its Tariff for Electric Service ("Tariff") with regard to the charge for historical customer bill information.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: The Authority's Tariff regarding the charge for historical customer bill information.

Purpose: To modify and add to the Tariff with regard to the charge for historical customer bill information.

Text or summary was published in the July 17, 2013 issue of the Register, I.D. No. LPA-29-13-00024-P.

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

Text of rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

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

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Refunds of Gas Suppliers, Pipeline Transporters and Storage Providers

I.D. No. PSC-43-13-00014-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 whether to grant, modify or deny a tariff filing by KeySpan Gas East Corporation d/b/a National Grid to make various revisions to the rates, charges, rules and regulations contained in Schedule for P.S.C. No. 1 — Gas.

Statutory authority: Public Service Law, sections 65 and 66(12)

Subject: Refunds of gas suppliers, pipeline transporters and storage providers.

Purpose: Tariff filing proposing revisions to the method of gas supplier, pipeline transporter and storage provider refunds to customers.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a further revision to a tariff filing by KeySpan Gas East Corporation d/b/a National Grid (the Company) to streamline and clarify the method the Company uses to credit customers with refunds the Company receives from gas suppliers, pipeline transporters and storage providers. Specifically, the Company is now proposing to credit gas supply refunds to firm sales customers and to allocate refunds from pipeline transporters and storage providers to firm sales customers, firm transportation customers, and not to Energy Service Companies and Direct Customers that have obtained a capacity release from the Company of the associated pipeline transportation or storage capacity. The amendments are being postponed to have an effective date of February 1, 2014. The Commission may apply its decision here to other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@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) 474-4535, 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.

(13-G-0274SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Submetering of Electricity

I.D. No. PSC-43-13-00015-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 grant, deny or modify, in whole or part, the petition filed by 2701 Kingsbridge Terrace L.P. to submeter electricity at 2701 Kingsbridge Terrace, Bronx, N.Y.

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: Petition for submetering of electricity.

Purpose: To consider the request of 2701 Kingsbridge Terrace L.P. to submeter electricity at 2701 Kingsbridge Terrace, Bronx, N.Y.

Substance of proposed rule: The Public Service Commission is consider-

ing whether to grant, deny or modify, in whole or part, the petition filed by 2701 Kingsbridge Terrace L.P. to submeter electricity at 2701 Kingsbridge Terrace, Bronx, New York located in the territory of Consolidated Edison Company of New York, Inc.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@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.

(12-E-0444SP1)

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

Requests for Lightened Regulatory Treatment and Approval of a Prior Transfer of Ownership by Champlain Hudson Power Express, Inc

I.D. No. PSC-43-13-00016-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 whether to approve, reject, or modify (in whole or in part) requests for lightened regulatory treatment and approval of a prior transfer of ownership.

Statutory authority: Public Service Law, sections 4(1), 66(1) and 70

Subject: Requests for lightened regulatory treatment and approval of a prior transfer of ownership by Champlain Hudson Power Express, Inc.

Purpose: To consider requests for lightened regulatory treatment and approval of a prior transfer of ownership by Champlain Hudson.

Substance of proposed rule: In a petition filed August 30, 2013, Champlain Hudson Power Express, Inc. (CHPEI) and CHPE Properties, Inc. (CHPE Properties) seek (1) what is denominated a declaratory ruling that they are subject to a lightened regulatory regime; and (2) a declaratory ruling that a prior transfer of ownership did not require Commission approval or, in the alternative, approval of such transfer. The relief sought in item (1) is actually an order providing for lightened regulation of CHPE and its subsidiary, CHPE Properties, as electric corporations, not simply a declaration of entitlement to such relief, so that relief constitutes a proposed rule. The relief sought in item (2) is a declaration, but the alternative relief is an order approving the prior transfer from CHPE's parent, TDI-USA Holdings Corp., of 25% of the ownership interests in CHPE to National Resources Energy, LLC, so that relief also constitutes a proposed rule.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@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.

(13-E-0392SP1)

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

Refunds of Gas Suppliers, Pipeline Transporters and Storage Providers

I.D. No. PSC-43-13-00017-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 whether to grant, modify or deny a tariff filing by The Brooklyn Union Gas Company d/b/a National Grid to make various revisions to the rates, charges, rules and regulations contained in Schedule for P.S.C. No. 12 — Gas.

Statutory authority: Public Service Law, sections 65 and 66(12)

Subject: Refunds of gas suppliers, pipeline transporters and storage providers.

Purpose: Tariff filing proposing revisions to the method of gas supplier, pipeline transporter and storage provider refunds to customers.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a further revision to a tariff filing by The Brooklyn Union Gas Company d/b/a National Grid (the Company) to streamline and clarify the method the Company uses to credit customers with refunds the Company receives from gas suppliers, pipeline transporters and storage providers. Specifically, the Company is now proposing to credit gas supply refunds to firm sales customers and to allocate refunds from pipeline transporters and storage providers to firm sales customers, firm transportation customers, and not to Energy Service Companies and Direct Customers that have obtained a capacity release from the Company of the associated pipeline transportation or storage capacity. The amendments are being postponed to have an effective date of February 1, 2014. The Commission may apply its decision here to other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@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) 474-4535, 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.

(13-G-0275SP2)

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

Refunds of Gas Suppliers, Pipeline Transporters and Storage Providers

I.D. No. PSC-43-13-00018-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 whether to grant, modify or deny tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to make various revisions to the rates, charges, rules and regulations contained in Schedule for P.S.C. No. 219 — Gas.

Statutory authority: Public Service Law, sections 65 and 66(12)

Subject: Refunds of gas suppliers, pipeline transporters and storage providers.

Purpose: Tariff filing proposing revisions to the method of gas supplier, pipeline transporter and storage provider refunds to customers.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a further revision to a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid (the Company) to streamline and clarify the method the

Company uses to credit customers with refunds the Company receives from gas suppliers, pipeline transporters and storage providers. Specifically, the Company is now proposing to credit gas supply refunds to firm sales customers and to allocate refunds from pipeline transporters and storage providers to firm sales customers and firm transportation customers, and not to Energy Service Companies and Direct Customers that have obtained a capacity release from the Company of the associated pipeline transportation or storage capacity. The amendments are being postponed to have an effective date of February 1, 2014. The Commission may apply its decision here to other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@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) 474-4535, 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.

(13-G-0276SP2)

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

Modification of the Deferral Recovery Provisions of Corning Natural Gas Corporation's Three-Year Gas Rates Plan

I.D. No. PSC-43-13-00019-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 whether to grant, deny or modify in whole or part, a petition filed by Corning Natural Gas Corporation to recover under-collections of Property Taxes and Large Customer Revenues through the Delivery Rate Adjustment.

Statutory authority: Public Service Law, sections 4, 5, 65 and 66

Subject: Modification of the deferral recovery provisions of Corning Natural Gas Corporation's three-year gas rates plan.

Purpose: To approve or deny the modification of the deferral recovery provisions of the three-year gas rates plan.

Substance of proposed rule: The Commission is considering whether to grant, deny or modify, in whole or part, a petition filed by Corning Natural Gas Corporation to recover under-collections of Property Taxes and Large Customer Revenues through the Delivery Rate Adjustment mechanism. Under the Gas Rates Joint Proposal, the Company is allowed to defer the difference between the actual and the target amounts until the conclusion of the three year term. The amounts of the two deferrals at the end of the first year of the rates plan are substantial. To avoid "rate shock" at the end of the term, the Company proposes to begin recovering 100% of the Property Tax deferral and 1/3 of the Large Customer Revenue deferral on January 1, 2014. The Commission may apply its decision here to other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@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) 474-4535, 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.

(13-G-0465SP1)